

"Science is nothing but trained and organized Common Sense, differing from the latter only as a Veteran may from a raw recruit, and its Methods differ from those of Common Sense, only as the guardsman's cut and thrust differ from the Manner in which a Savage Wields his Club."

HUXLEY.

COMMENTARY
ON THE
SCIENCE OF ORGANIZATION
AND
BUSINESS DEVELOPMENT

BY
ROBERT J. FRANK, LL. B.
OF THE CHICAGO BAR

A Practical Treatise on the Promotion, Organization,
Reorganization and Management of
Business Corporations

WITH
SPECIAL REFERENCE TO APPROVED PLANS AND PRO-
CEDURE FOR THE FINANCING OF MODERN
BUSINESS ENTERPRISES

FOURTH EDITION

FOR SALE BY
The Financial Publishing Co.
7 Hancock Avenue
Boston, U. S. A.

COPYRIGHT 1907, 1909, 1910, 1911
BY ROBERT J. FRANK
COPYRIGHT 1914, BY ROBERT J. FRANK

ALL RIGHTS RESERVED

CONTENTS

INTRODUCTORY.

CHAPTER I.

ORGANIZATION.

Common Errors.
The Corporation and Its Advantages.
How to Organize a Corporation.
Where to Organize.

CHAPTER II.

CORPORATE FINANCING.

Capital, Bonds and Stocks.
Capitalization of Corporations.
Raising Additional Capital.
Transferring An Established Business to a Corporation.

CHAPTER III.

CORPORATE MANAGEMENT.

Directors, Officers—Their Duties and Liabilities.
Stockholders' Rights and Liabilities.
By-Laws and Their Uses.
Corporate Records and Books of Account.
Examination of Books and Records.

CONTENTS.

CHAPTER IV.

REORGANIZATION AND CONSOLIDATION OF ENTERPRISES.

Reorganization—Possible Advantages Therefrom.
Consolidation of Enterprises.
Stock-Jobbing.

CHAPTER V.

PROMOTION OF ENTERPRISES.

Promoters.
Promotion Contracts.
Good Will—Trademarks and Trade Names.
Patents and Their Commercial Value.
Mining Enterprises.

APPENDIX.

Containing General and Special Forms of Contracts, Reorganization and Installment Certificates, Proposition to sell Assets to newly organized Company, Offering of Stock, By-Laws, Resolutions, etc.; also a synopsis of the Corporation Laws of favorite States for incorporating, rules for Listing Stocks and Bonds, forms of Option Contracts, table showing the Earnings of Stocks and Bonds, and other special matter relating to the above subjects.

PREFACE

The object of this volume is to condense into one readable book an educational discussion of the fundamental *practical* questions which are presented in the organization, reorganization and financing of business enterprises, that are not within the scope of a strictly legal treatise; for the benefit of incorporators, officers and directors of corporations, financiers, accountants and investors, as well as all other persons who are interested in modern business.

When the first edition of this book appeared (in 1907) no published information, in connected form, on the subject here discussed was available; and while a number of separate treatises—on different branches of the subject *here treated as one*—have since been published, no other single volume has appeared professing to cover just the same ground.

It may be said that this book reflects—in a large measure—experiences and personal theories of the author; at the same time including and adopting the theories and principles of others that have received approval in the world of business and

finance. And while the selection, arrangement and manner of treatment of the subjects discussed are somewhat arbitrary—and not in harmony with the equally arbitrary arrangement now adopted by academic instructors and authors—yet it is believed that the manner of presentation here adopted will convey to the reader a sufficient understanding of the subject discussed for all *practical purposes*.

If any explanation is wanting for the appearance of four separate editions of this work within a decade, it must be found in the frank admission that competent critics of both the form and substance of former editions have offered valuable suggestions from time to time—and the author's subsequent research and experiences in active practice and in nearly every state, have shown wherein the book could be improved, i. e., made more comprehensive, useful and reliable; then the generous reception and patronage that have been accorded this book throughout have furnished whatever additional incentive was required to induce the author to avail himself of every opportunity to make the work creditable, reliable and authoritative.

ROBERT J. FRANK.

Chicago, June, 1914.

INTRODUCTORY

Before the advent of the corporation, or before the almost universal adoption of that form of conducting business, those responsible for the success or failure of an enterprise were principally concerned about its details. Now such details are delegated to subordinates, and the actual head of the enterprise is more intimately concerned with its policy and its financial plans and general undertakings.

It has been said that the type of man who has genius for acquiring exact technical knowledge is not ordinarily a successful executive, and the accuracy of this statement must, in a measure, be admitted; but it must also appear to those familiar with present conditions that the successful executive not only necessarily possesses an intimate general knowledge of the science pertaining to the particular enterprise under his control, but an equal *general* knowledge of the established rules concerning corporate organization and finance, and the elementary rights of stockholders, as well as the duties and responsibilities of corporate officers.

It is clearly beyond the possibility or legitimate purposes of any book to attempt to so qualify its readers as to enable them to dispense with the services of the legal profession; but *it is possible* to give such a general announcement of the law and approved procedure pertaining to corporate organization and financing—and particularly the practical features relating thereto—as will be of inestimable value to those charged with the responsibilities of such undertakings, and at the same time suggest to the practicing lawyer who has not specialized along those lines the important *practical* questions which inevitably arise for consideration in the course of such employment.

Particularly is this true concerning the reorganization of a business enterprise where the adoption of corporate plans for its conduct is concerned. Innumerable questions there arise which ordinarily do not receive the attention they deserve on account of their far-reaching effect upon the success or failure of the enterprise, or upon the rights of the individuals interested therein.

The contents of this volume may properly be termed a discussion of the *middle* ground between what is ordinarily considered within the employment and province of the lawyer—who is called upon to create the corporate entity which is to conduct a new enterprise, or to take over the

property of or reorganize an old one—and what is reasonably to be considered within the knowledge of the ordinary promoter or the individuals actually interested in such undertakings.

Every mistake in the organization of a business corporation discloses ample evidence of either lack of proper knowledge of the questions constituting the middle-ground referred to, or (what is equally disastrous to the enterprise) the failure to put such knowledge into execution; and this might, and often does arise on account of the fact that the employment of or instructions given the corporation attorney have been *limited* to simply complying with the statutory formalities in the creation of the corporate entity.

Strictly speaking, the lawyer's duty is discharged by simply complying with the instructions of his client, be they ever so faulty; and the client is rarely ever qualified to decide for himself the most important preliminary questions that arise when the first steps are to be taken in launching a modern business venture, namely: the creation of the corporation which is to own and conduct it. Its purposes, capitalization and financial plans, adequate protection for investors or the owners of property to be conveyed, and rules for internal conduct, etc., are each and all matters of first importance, either immediately or at some future period of development; and these and other

questions of like significance are not met with in every-day affairs of business life, and rarely in the general practice of law.

A careful examination of all the works on corporation law now in existence fails to disclose any adequate discussion of the field alluded to above; and this, perhaps, on account of the difficulty attending such a venture, owing to the great variety of conditions which are encountered in actual practice, and the almost hopeless task of attempting to cover such field in any satisfactory manner. But it is believed that a brief and concise announcement of the general principles covering the practical questions referred to, (which have been established by precedent *as practical*) and an equally general discussion of the settled law relating thereto, must necessarily be of value, particularly to the student or executive who is desirous of acquiring a knowledge along such lines, and who is not inclined or able to devote the time necessary to an extended research, much less to acquire the experience necessary to apply such knowledge once it is obtained.

It may appear to those who simply review the contents of this volume, or who are unfamiliar with its purpose, that the arrangement of the subjects are somewhat unsystematic, and that it discusses only legal questions generally. It is to be hoped, however, that, upon a more careful

study of the volume *as a whole*, the connection and continuity will be disclosed, and the fact appreciated that a general, rather than a particular discussion of the subjects in hand is more to be desired—as being of greater permanent practical value,—than an extended academic discussion of details involving circumstances or conditions which may never be met in actual business life, or those which have become obsolete and abandoned as impractical.

In every work of this character many questions, often considered elementary, are necessarily discussed, for the reason that every book treating on any science must anticipate that such a work will more often fall into the hands of those unfamiliar with such questions than otherwise.

A study of the legal phase of business organization and development necessarily involves the consideration of, at least, four distinct subjects, viz.: Corporation Law, Corporation Finance, Corporation Accounting and Business Economics generally. Then the practical questions that are ever presenting themselves for solution in the application of theoretical principles to practical demands, makes work in this comparatively modern field one of the most exacting of occupations and one that should eventually occupy a place among the various recognized specialties of which the practice of law is now composed.

The illustrations given in the Appendix are (with omissions of names and other personal reference) instruments which have been put into actual service by the author and are here included to supplement and explain certain important statements or plans referred to in the text, and at the same time serve as suggestions for adaptation by the Profession.

SCIENCE OF ORGANIZATION

FRANK'S "SCIENCE OF ORGANIZATION," ETC.

SCIENCE OF ORGANIZATION

CHAPTER I.

ORGANIZATION.

Common Errors.

The Corporation and Its Advan-
tages.

How to Organize a Corporation.

Where to Organize.

**Common Er-
rors.**

Every business has peculiarities and mysteries that cannot be solved by intuition, and the controlling elements that make for success (when recognized at all) are often the result of the accidental occurrence of circumstances rather than the result of any pre-conceived plan. But there are elements which lead to certain failure, and they may, in most cases, be "seen from afar" and avoided by seasonable consideration.

More money has often been made or lost through the plans adopted for financing, organizing or reorganizing a business than in its operation; at the same time mistakes in such plans often prevent well-merited success or occasion individual sacrifice.

There is often a tendency in the selection and promotion of a new enterprise to look primarily, and almost exclusively, to the "opportunities" of the business, and to disregard the equally important questions concerning the formation, or methods to be adopted for its successful conduct.

Experience has demonstrated that a business opportunity, otherwise promising, may be unsuccessful without a proper basis for operation, adequate working capital or executive ability behind it to organize the details and properly conduct such a business.

Then in this day of corporations, how frequent and familiar it is to observe business men, with a more or less promising business, creating corporate securities thereon—regardless of their appropriateness for the purpose intended or occasion offered,—and to then go into the market in search of a broker or promoter who handles "securities" and expect to thereby obtain capital for their needs, and this at a minimum cost or expense; or to recount the numberless instances where business men are seeking after "some one" who will secure capital for their undertaking, and expect to find those who are regularly employed in such a calling, to say nothing of the unbusiness-like and absurd terms and conditions that the same

seekers after capital expect to arbitrarily impose upon these magical creatures, once they are found.

To err in the inception of a business undertaking, in its organization, or in some apparently minor detail, *may* mean a handicap throughout; and the consequences of faulty formation, or errors of judgment in matters of finance are rarely discovered until experience has pointed them out, and frequently, after it is too late to remedy them.

Then, it is but natural to refuse to see or admit such mistakes after they are once made, and to proceed upon a theory that has proven to be erroneous or without the promise of ultimate financial reward to those most deserving.

There are no undertakings in business affairs where so many opportunities for the exercise of skill and experience are presented, and where the same are *so essential to success*, as in the re-adjustment of the affairs of an established business—such as the devising of practical attractive and advantageous plans for the securing of its working capital, and in the regeneration of its vitality.

The business with a proper *foundation* is at least one-third a success; the other two-thirds may usually be acquired by opportunity, and proper and adequate facilities.

The Corporation and Its Advantages. Corporations as instruments of business are now indispensable; and it is necessary that their importance and characteristics generally should be familiar to all who are directly or indirectly interested in their creation and conduct. No effective substitute can be invented that will take its place in the business world, although numerous recent attempts have been made in this direction.

The Supreme Court of the United States has said that "Private corporations are but associations of individuals united for some common purpose, and permitted by the law to use a common name, and to change its members without dissolution of the association." And also, "A corporation is an artificial person created by law as the representative of those persons, natural or artificial, who contribute to, or become holders of shares in the property entrusted to it for a common purpose. As it is the creature of positive law, its rights, powers and duties are prescribed by the law."

The legitimate purposes of the corporation are to provide a *modern system* for the conduct of business, to enable two or more individuals to combine their capital and efforts in the accomplishment of a common purpose, and also to obviate the risks and many other disadvantages

of the obsolete co-partnership and private ownership of enterprises.

The fact that great fortunes have been amassed and "trusts" created through this modern system simply demonstrates the weakness in the laws of the various States where such organizations have their existence and domicile, and should not militate against the plan itself.

The legitimate advantages of incorporating a business are many and varied. It is impracticable to enumerate and succinctly define all, or any considerable number of them. Among the most prominent, however, are the following:—

It exclusively perpetuates any trade name, and incidentally the good will attached thereto.

It eliminates the dangers of personal liability beyond the money originally invested which attaches to any business conducted by an individual or co-partnership.

It enables the organizer to engage in different pursuits, to more successfully conduct an enterprise, or enlarge the same, with a limited amount of individual capital.

Upon the death of a stockholder, or disagreement, or separation of the management, the business is not necessarily hampered or interrupted, and the transfer of the individual interest of any stockholder is simplified, and its value readily determined.

The capital invested can be increased at any time to admit of expanding the business, or to enable competing enterprises to join forces, without disadvantage to either.

Employes or customers may be permitted to become interested in the enterprise without the danger of dissolution or other possible objectionable entanglements which almost invariably occur through disagreement of co-partners.

Any stockholder may pledge his individual stock to obtain individual accommodation without jeopardizing the interests of the corporation, which cannot be done by a partner in a co-partnership; besides, the individual debts or personal entanglements of any stockholder will not interfere with the existence or standing of the corporation.

Then, the advantages of the individual stockholder of raising funds upon his individual interest in an enterprise (stock) over that of any other form of personal property is apparent.

In the majority of cases a business may be sold outright to a much better advantage by first incorporating it. It is less difficult to find a number of persons who would take stock in a company that owned an attractive business than to find an individual who could purchase the whole; and besides, the value of the Good Will can be, in this way, preserved and realized upon, and the price

of the business fixed by the owner before it is offered for sale.

Probably the most important of all the advantages are the *opportunities* which are possible to the resourceful individual, and which present themselves in almost every undertaking, and they depend entirely upon the skill, ability and experience of the organizer of the particular corporation.

How to Organize a Corporation. It is frequently difficult to appreciate or remember that a corporation is an artificial being, and exists *independently* of the stockholders or persons interested in it. By comprehending and bearing this fact in mind, all questions relating to a corporate existence are simplified.

These artificial beings, "invisible and intangible," are created only by legislative enactment. All of the States, however, now have what is termed "General Acts," which means that the Legislatures of the various States have prescribed methods of creating corporate bodies, and have delegated to a certain State official, or officials, usually the secretary of state, certain powers and duties which relieve the applicant for corporate license from the delays and other difficulties incident to direct application to the Legislature itself.

The first step in the organization of a business corporation is the determination by the parties to be interested therein upon some definite object to be accomplished; that involves the important question of business policy, which clients are usually expected to solve for themselves.

For convenience, the advantages of incorporating have been treated under the preceding head; for it is important to understand such advantages in connection with the purposes in view. In fact, the contents of this book are especially intended to be helpful in determining these and other important practical questions, and the principal purpose thereof is to supply such information as is otherwise inaccessible, and it will be necessary to refer to the various headings for a full explanation and discussion of the questions here suggested.

After the objects which it is desired to obtain have been agreed upon and formulated, the capitalization fixed, and all other preliminary questions are settled the next step is to apply to the Secretary of State for a charter or Certificate of Incorporation, etc.

This application (whether in the form of a preliminary contract or formal application) usually sets forth the corporate name selected; the objects for which the corporation is to be formed; the amount of capital stock; the amount of each share; the number of shares; the location of the prin-

cial office of the corporation, and its duration of corporate life.

Upon the receipt of the application properly made out and executed, the Secretary of State issues the Certificate of Incorporation or Charter; this instrument empowers the parties named therein to proceed with the incorporation, as provided by the law of the state creating it, or to proceed with the business of the company, as the case may be.

In selecting the corporate name, reference should be had to the business contemplated, if this is feasible, and the name should be as short and euphonious as possible. The retention of an established trade name is *always* desirable, and can usually be accomplished without difficulty.

Care should be exercised in avoiding the selection of the name of a corporation in existence, either in the State where the charter is obtained, or elsewhere, for under the recent law of "Unfair Competition," now recognized by all courts, it has been held that an injunction would lie to restrain the use of a corporate name so similar to one already in existence that it would create confusion in trade, and otherwise be injurious to the business of the company having a prior corporate existence.

The objects of the corporation are, perhaps, the most important legal rights to be protected in

the formation of a corporation, for they frequently give the incorporators many advantages in the future development of the business. While it is always desirable to make the objects contemplated as broad as possible, it is necessary under the statutes of some states to limit the objects of the corporation. It must be borne in mind that the doing of business *ultra vires* (outside the scope of the objects set forth in the application) is unlawful, and may result in loss to the company and lead to other complications.

Determining the amount of capital stock is a subject of sufficient importance to call for individual treatment under a separate heading.*

The amount of the shares must not be less than \$10, nor more than \$100 in the State of Illinois, and there is such a limitation imposed in nearly all the states of the Union. As to the duration of the existence of the corporation, this may be made the safeguard or otherwise of the rights of the parties; that is, if it is desired to conduct the enterprise for a limited time, that fact can be set forth in the application; and, in consequence, the corporation's life will end upon the termination of the time limit thus set forth. This means that the affairs of the corporation *must* be wound up at that time, regardless of the wishes of the stock-

* "Capitalization of Corporations," page 54.

holders, and without any further action being taken by them which could not be done without disastrous litigation if such time limit was omitted.

On the other hand, if it is not desired to have a limited undertaking, the duration of the corporation should be ninety-nine years (the time limit in Illinois), or perpetual, or the limit of time permitted by the laws of the state selected; for one of the chief assets of a business is its trade name, and this should be more valuable each succeeding year.

Under ordinary circumstances, a particularly important step in the organization of a corporation is the payment of the subscriptions to the capital stock, or, if there be no formal subscriptions, then payment of the capital stock to be issued.

Under the laws of some states, it is necessary to pay in a certain percentage of the authorized capital, ranging from a nominal amount to one-half of the same.

Care must be exercised in accepting property in payment for capital stock by the commissioners, or directors as the case may be, or they assume a liability which they may not contemplate, or intend to assume.

In the Appendix will be found a copy of a resolution which it is considered covers this question

in a practical way,* and the subject of taking over assets other than cash in payment of stock in a new corporation is treated at length hereinafter.†

Appraisals of property to be taken in payment for stock are always advisable, if not necessary, both by the commissioners and directors when elected, and as to the valuation of such property, that is also treated hereinafter.†

Separate minutes of the acceptance and appraisal of property by the commissioners or organizers should be entered in the Minute Book for their own protection, and as a basis for a resolution, by the directors, in taking over the property, after the corporation is formed.

Upon the meeting day of the subscribers to the capital stock, the usual formalities should be observed in all particulars, in the holding of the first meeting and transaction of business thereat, and the minutes should be preserved and recorded in the Minute Book of the corporation, and signed by the parties in interest, if they are not too numerous; at any rate, they should be signed by the commissioners or incorporators and attested by the secretary.

At this meeting, the subscribers to the capital stock or incorporators, usually elect the first

* Appendix, page 244.

† "Transferring An Established Business to a Corporation," page 80.

Board of Directors, and this is important in relation to the future management and control of the corporation, for the ensuing year, at least; for it must be borne in mind that the directors control the offices of the corporation, and not the stockholders, and that the officers in turn transact the business of the corporation.

The Statutes of Illinois relating to directors provide that the number of directors shall be fixed at the first meeting of the subscribers, and *their* number depends wholly upon the will of the incorporators. Such subscribers in Illinois may, if they see fit, divide the Board of Directors into three classes; the term of office of the first class expiring on the date of the annual election of the company then next ensuing; the second class one year thereafter, and the third class two years thereafter. Thus, at each annual election for directors after such classification, the stockholders elect, for the term of three years, the number of directors constituting such class whose term then expires. In this way, one or more directors will hold office from the beginning of the organization for three years, others for two years, and still others for one year, if for any reason this plan be advisable, as it frequently is in large corporations. The usual plan, however, is to elect the entire Board of Directors for a period of one

year, particularly in small or close corporations and under the laws of most states.

In Illinois three commissioners hold the title to the property or funds of the corporation in process of formation, which have been turned over to them in accordance with the law, and it is then necessary for them to make a report in due form of the proceedings suggested above and forward it to the Secretary of State, who upon its receipt (if in all things it complies with the law and the original application) then issues a certificate of complete organization, and the Commissioners or their Counsel should at once record the same in the office of the Recorder of Deeds of the county where the principal office of the corporation is located; for this is a condition precedent to the corporate life of the company, or its right to transact any other business than that already explained; and the recording of the charter or certificate of organization is likewise required in all states.

In the adoption of a code of by-laws for the government of the company, it is well to remember that the by-laws are *the internal laws of the corporation*, and as such should set forth rules necessary for the proper conduct of the business. This has been made the subject of a separate discussion,* and, therefore, need not be further alluded to at this time.

* "By-Laws and Their Uses," page 106.

While it is impossible to prepare "stock by-laws" that will meet all the requirements of incorporators generally, still the form given in the Appendix hereto† will be found to be adaptable, (with minor changes, to conform to the legal and business requirements hereinafter suggested) to the ordinary business corporation organized under the laws of any state.

After the adoption of a set of by-laws for the government of the corporation, the next step to be taken is the election of officers, and they will be such as the by-laws have provided for. The laws of most states require every business corporation to have a President, a Secretary and a Treasurer; and leaves it discretionary with the directors as to how many additional offices they shall create.

If assets have been turned over to be applied upon the payment of stock subscriptions, the Board of Directors should (as before stated) invariably appraise the same and approve or disapprove the action of the commissioners or organizers in this regard; for inasmuch as the corporation contemplated may not yet be in legal existence, the commissioners or organizers are the only proper persons to take title to property, or to receive advance payments on account of stock subscriptions and for that purpose, they stand in the

† Appendix, page 253.

relation of trustees for the new corporation when formed.

The approved method of taking over property or advance payments made by the stockholders to the commissioners or organizers in advance of complete organization, is for the Board of Directors, by proper resolution, to *ratify, confirm and adopt* the acts of such commissioners or organizers in this behalf, if such acts are in fact proper and deemed for the best interest of the corporation. The form of resolution applicable for this purpose already alluded to will serve as a guide to what is usual under the circumstances here indicated.

The rules relating to the valuation, appraisal and purchase of assets by a new corporation are further, and at length, discussed under the title, "Transferring An Established Business to a Corporation."†

After the foregoing steps have been taken, and the minutes of the various meetings written up in the Corporate Record Book, the ordinary business corporation is in existence, fully organized and ready for the transaction of any business for which it was incorporated.

The question of "how to create the corporate entity before the principal capital becomes interested" frequently arises. Particularly is this

† Page 80.

so where the incorporators have a limited amount of capital, or the corporation is being created for the purpose of taking over a business already established, or for reorganization purposes, and the details of such undertaking have not been entirely settled. In such a case it is possible to accomplish the object, and fully comply with the law wherever such law requires a certain percent of the capital stock to be paid in before complete organization, etc., by first incorporating with a nominal capitalization, and afterward increasing the capital stock to the amount originally contemplated or desired.

The Corporation Laws of the various States differ somewhat materially in the *manner* and form of creating a corporation, and it is beyond the scope of this book to undertake to discuss the *details* of the various acts; the formalities required for their compliance must necessarily be entrusted to those familiar with such laws as they exist at the time of organization; but the essential *practical* features of the organization of business corporations are much the same everywhere, and they are discussed above and under the various headings that follow.

**Where to Or-
ganize.**

Like most questions of procedure, this is one depending largely upon the circumstances of each individual case. There

are no general rules which can be applied when the *ultimate success* of the enterprise is considered.

So far as the most favorable laws are concerned, that is always subordinate to the more important questions of business policy. For instance, one State may offer inducements in the way of reduced incorporation fees and enlarged privileges—in short, a more favorable franchise, but when this is compared with the other objects sought to be accomplished, it is of little importance to the organizer.

Many a corporation has been handicapped by making the fatal mistake in organizing under the laws of some foreign State. Usually companies with ulterior objects seek domicile in a State offering the greatest latitude for their purposes—this fact being so notorious that it is often *prima facie* a reflection upon legitimate undertakings to go away from “home” for the purpose of organization. However, this reflection may be removed by explanation, when the peculiar circumstances of the particular case *justify* the selection of a foreign State for incorporation, as they frequently do, particularly by large undertakings that contemplate the establishment of branches in different parts of the country.

Delaware and Maine have gone a long way toward encouraging corporations to organize in

their respective States; North and South Dakota, Virginia, West Virginia, New York and Arizona have attempted to do likewise, and the laws of all these States have their peculiar advantages, particularly over those of some of the other States where corporations would naturally desire to locate on account of the business advantages offered.

It will be found that in the States where business is most centralized, and where the actual business of most business corporations is transacted, the laws are more or less stringent, and some are unreasonable and obsolete; but, in some of these last-mentioned States the intention at least is to protect stockholders and creditors, and for the legitimate, well-meaning enterprise it is often best to submit to these conditions and organize at home.

Particularly is this true where outside capital is to be interested. Prospective investors, as a rule, invest their money under the advice of legal counsel, and local attorneys are naturally more familiar with the laws and decisions of the courts thereabout in their own State, and can advise their clients more readily and securely; and in addition to this fact, the investing clients themselves feel more secure in their rights when the corporation is organized under the local State laws.

The State of New Jersey was one of the first to offer inducements to foreign corporations in the way of reduced incorporation fees and enlarged powers and limited liability. A large number of the modern combination organizations were attracted to that State on that account, but the Legislature has very recently changed the laws, to such an extent as to make it necessary or advisable for those corporations to leave that State and reincorporate elsewhere, particularly in Delaware.

It must be borne in mind that in nearly all of the States the right to change the General Incorporation Act is reserved by the Legislature, and the special advantages offered may be diminished or the law repealed at any time, and such privileges of the corporation thereby curtailed.

In addition to this possible objection, most States have recognized the fact that their local capital have sought other States for the purpose of organization only to evade the payment of the local incorporation fees, and to otherwise evade the provisions of the laws of the respective States where such corporations in fact intend to operate. To protect themselves, special acts have been passed by most of the States, similar to that now in force in Illinois, which defeats nearly all of the advantages heretofore obtained by organizing in any of the foreign jurisdictions.

The present act of Illinois relating to "Foreign Corporations" is given verbatim in the Appendix;* and most of the States have a very similar statute for the regulation of foreign corporations.

For the convenience of prospective incorporators, a synopsis of the Corporation Laws of the States of Delaware, Maine, and Virginia will also be found in the Appendix,† which shows the special powers, statutory fees and other information desirable for a preliminary understanding and consideration of the questions to be taken into account when selecting a State in which to organize.

The various statutes of those States deemed most favorable, and above referred to, have numerous minor provisions, presumably for the protection of stockholders and the public generally, which often serve to furnish dissatisfied stockholders with the means of annoying and otherwise interfering with the business of a corporation organized in a foreign jurisdiction.

It will be seen, by reference to these statutes, that the objects to be obtained, and suggested here, must be taken into consideration, first in this as well as in other questions relating to the organization of a business corporation; and the important question to decide is always, What ef-

* Appendix, page 305.

† Appendix, page 285.

fect will the organization of the particular corporation under the laws of a foreign State have upon its business success?

Whenever the laws, conditions, purposes or plans justify the decision to incorporate in a state other than that in which the parties in interest reside, or where the principal operations are to be conducted, it is of first importance that a proper statutory agent or local representative be chosen to represent the new corporation, both to bring it into existence, and thereafter in qualifying under the laws of the state relating to domicile, such as maintaining a statutory office, acting as local resident agent, director or officer—as the laws may require—for the acceptance of service of legal process, the keeping of certain corporate books or records, etc., all of which require reliable, competent and *permanent* attention in order that such new corporation may not suffer loss through unknown, or unnecessary litigation, statutory fines, etc.

Similar important services are necessary when any corporation attempts to comply with the various “Foreign Corporation Acts” by establishing local branches in states foreign to that of their creation; and here as before suggested the questions of reliability, experience, facilities to serve, and permanency (rather than economy) should control in the selection of a representative for the conduct of such foreign affairs.

CORPORATE FINANCING

FRANK'S "SCIENCE OF ORGANIZATION," ETC.

CHAPTER II.

CORPORATE FINANCING.

Capital, Bonds and Stocks.
Capitalization of Corporations.
Raising Additional Capital.

Transferring An Established
Business to a Corporation.

C a p i t a l, The questions of finance are
B o n d s a n d among the most difficult—if not the
S t o c k s. most important—with which the organizer of a
business corporation has to deal, and like other
questions of business policy, they are necessarily
governed by the circumstances of the undertak-
ing in hand.

It is now unnecessary to argue the importance of financial plans and precautions in the organization of a corporation which is to own and operate an important industry, or where the same is created for the purpose of reorganization of an established business; the discussion that follows deals more at length with the subject of what is now termed "Corporation Finance" and particularly with the staple securities created by corporate bodies.

It is necessary for a correct understanding of the questions of Corporate Financing that the dis-

inction between the terms *capital stock*, *shares of stock* and *capital* be understood. At the same time, an understanding of the nature and peculiar characteristics of *stock* as property is essential.

The difference between the *capital stock* and *capital* of a corporation is, that the former constitutes the amount divided into shares or parts at which the incorporators have limited the issuance of stock—in other words, the amount upon which calls may be made upon the stockholders and dividends paid; while the *capital* of a corporation is the proceeds of the sale of this capital stock, and, in addition thereto, all money or property of the corporation acquired from any and all lawful sources. The former amount remains the same until changed by consent of the State, while the latter may vary according to the success of the enterprise.

The term *shares of stock* means the several parts into which the capital stock is divided, *e. g.*, if the capital stock of a corporation is \$100,000, and the denomination of the shares is fixed at \$100 each, a share of stock represents one one-thousandth interest in the corporation. Then these shares of stock are *represented* by stock certificates, which may be made out to represent one, or any number of shares of the capital stock, according to the will of the makers of the certificates.

The proceeds of the sale of the capital stock—the capital—belongs to the corporation, and the owners of such capital stock have no right to withdraw any part of such proceeds after it is once paid into the treasury; and this is the law, even if all the capital stock is owned and held by one individual. As heretofore stated, the corporation is a *legal entity*—a person in the eyes of the law—and the stockholders, directors and officers combined do not constitute the corporation. A stockholder, by reason of his owning stock in a corporation, does not thereby acquire title or right to the profits or surplus of a corporation, until the same has been formally and legally “declared” by the Board of Directors and formally set apart for the stockholders; at the same time, a stockholder has no title or individual interest in, or rights to, the property of a corporation until a dissolution takes place. He cannot even acquire a good title to the property of a corporation by purchasing all of its stock and then abandoning the corporate existence.

There are but two general classes of stock in a business corporation which need be here referred to, namely, *common* and *preferred*. Many writers on Corporation Finance give other classifications, such as “Watered Stock,” “Over-issued Stock,” “Deferred Stock,” etc., but they all fall within the above classification, or are of no importance

in this connection, except to understand the meaning of the terms employed.

“Watered stock” means simply stock that has been issued and not paid for, in money or money’s worth, to the extent of the face value of the stock issued; “over-issued stock”—as its name implies—is stock that is issued in excess of that authorized by law, or for which the corporation was originally capitalized; and the term “deferred stock” is a class practically unknown in this country, but it is created and authorized by the laws of England, and often issued to promoters. The terms upon which such deferred stock is issued vary, but usually the dividends are deferred to the payment upon all other classes of stock issued and outstanding.

Common stock is a general interest in common in the property of a corporation. It is, like all other stock, divided into parts or shares which represent a certain proportionate part of the whole. This class of stock confers equal rights and privileges among all its owners, such as the right to share in the profits of the business; to vote for directors; and upon a dissolution of the corporation, to share equally with all other stockholders, in the division of the assets, etc.

Preferred stock is a special interest and contract combined whereby the corporation agrees to pay its owners a certain specified dividend *out*

of the net profits of the business in advance and in preference to the common stockholders.

It may not be amiss to here refer to some of the important differences between *preferred* and *common* stock. The former provides for a guaranteed dividend out of the net profits, usually the customary rate of interest of the State where the corporation is organized. Such dividends can be made cumulative or non-cumulative; that is, should the net profits for any one year be insufficient to pay the dividend provided for cumulative preferred stock, any unpaid portion of such dividend must be made up and paid out of the profits of any subsequent year, before dividends can be applied to the common stock, or any other class, and where such preferred stock is not made cumulative, this assurance of back dividends is absent.

Common stock has no guaranty of dividends, even if there should be net profits, but is entitled to all of the earnings of the company after the dividend is paid on the preferred stock; and unless the conditions of the preferred stock are such as to prevent, it will pro-rate with the common stock in all dividends that may be earned and declared, after the dividend has been paid on the preferred stock, and an equal amount paid to the holders of the common stock.

The conditions upon which preferred stock is

issued govern all the rights of its holders, and constitute a contract between the corporation and the holder; and in the absence of a condition to the contrary, preferred stockholders may vote and exercise all the rights of the holders of the common stock.

Some of the State statutes do not provide for the issuing of preferred stock, but it has been repeatedly held that such stock may, nevertheless, be issued if it is provided for at the time of organization; and such preferred stock may also be issued at any time thereafter, with the consent of the holders of all the common stock of the corporation.

A Stock Certificate is not necessary to the ownership of stock in a corporation. It is merely *evidence* of the ownership; the stock exists independently of the certificate itself.

Shares of stock are a rather peculiar species of property. They are intangible, and resemble what is termed in law a *chose in action*—that is, a right or claim, which can be reduced to writing, and enforced in a court of law.

Shares of stock are, in the absence of a statute expressly authorizing the same, not subject to levy and sale upon execution, like other personal property; however, most of the States have enacted laws whereby such levy may be made. It is necessary to follow such statutes strictly in order to

divest the record holder of stock of his title by attachment; and it has been decided that attempting to reach the interest of a stockholder by garnisheeing the corporation is ineffectual, which demonstrates the principle above stated that this species of property is somewhat peculiar, and differs from a claim for money or property, in that particular at least.

Then, in addition, shares of stock possess many features of negotiability. For instance, by simply indorsing the certificate in blank, stock may be transferred from one individual to another by delivery of the certificate; and the right to insert the name of any intermediate or ultimate owner, and to have the stock transferred to such owner upon the books of the company, passes with the certificate indorsed in that way—which enables the possessor of this species of property to readily use the same as security for financial accommodation.

Bonds are formal obligations executed by a corporation and usually secured by trust deed upon the plant or assets of the company. They are ordinarily issued in denominations of a size that will enable the corporation to negotiate a large loan among a number of investors, and to secure alike any number of holders of such obligations.

The terms of payment and security underlying

an issue of bonds are wholly dependent upon the will of the corporation creating them. The usual object of issuing this form of obligation is to obtain what is termed a "permanent loan," or financial accommodation for a long time, and upon a low rate of interest, in order that the same may be used for the advancement of the business, and to be repaid out of the future profits of the enterprise.

It is customary to make such obligations payable to the bearer; and when this is done, they are susceptible of being transmitted from one person to another without formality of any kind. The law presumes ownership with their possession, when made in that way.

The conditions of a trust deed made to secure such bonds, as well as the terms of the bonds themselves, may be made to facilitate or hinder their sale; consequently great care is necessary in the preparation of both.

Bonds may be drawn so as to be convertible into stock, at the option of the holder, and in this way facilitate their sale, by enabling the owner to practically invest in the enterprise, and in case of success, to convert his bond holdings into stock. And on the other hand, if the venture proves less profitable as an investment than the interest guaranteed by the bonds, the holder is

secured, and can ultimately recover his investment, with interest.

Bonds may also be issued in payment of dividends; by so doing, the amount of the dividend may be retained in the business for development purposes, and the stockholders will have received what is equivalent to the dividend as well.

The foregoing simply explains the latitude and some of the advantages afforded the creator of bonds and stocks. The terms that may be incorporated in stock certificates and industrial bonds and in the trust deed given for their security, are always a subject of contract between the corporation and the purchaser; such terms are limited only by general rules of law and business expediency.

The term *debenture* is often used interchangeably with, or substituted for, the word bond. While the meaning of the term *debenture* is, strictly speaking, the evidence of an existing debt, it may be a simple debt, and usually unsecured; this class of security is not popular in the United States, except for certain rather unusual purposes. Common usage has established many qualifications to the word bond, and they are approved in the world of finance, and their meaning and significance understood; but such instruments are usually applicable only to railroads and similar institutions for their financing.

**C a p i t a l -
ization of Cor-
porations.**

It is comparatively a simple matter to determine the questions relating to capitalization where the number of parties in interest are few, or in a case where the business to be capitalized is what is termed a "close corporation." In such cases the objects to be accomplished are usually confined to the conduct of a single business venture for the benefit of a limited number of persons, and the questions that arise under other, and ordinary circumstances, are absent. It is, therefore, unnecessary to discuss the capitalization of such a corporation as is here alluded to, for it is presumed that no outside assistance or interest will be desired.

It is where the rights of the parties are to be considered at the time of organization—in order that they may be protected under present conditions and future business developments, and that the needs of a business may be provided for at the time of organization, as well as in the future—that this subject requires special attention.

A business with a good foundation and prospects may be greatly handicapped, and its opportunities for successful promotion literally "killed," by over-capitalization. For example, A had a valuable patented device that was in itself, the foundation for a successful business venture. He formed a corporation and capitalized it at \$2,000,000, when as a matter of fact, \$100,000 was

all the working capital which was necessary for the successful conduct of the business.

By manipulations, hereinafter more fully explained, the business was so arranged as to offer this stock at a ridiculous figure (below par, of course), with the result that after disposing of a certain amount of this stock—enough to get the business thoroughly entangled, and to demonstrate that such a plan was not feasible, and that sufficient money could not be raised thereby to exploit the device and promote the business—it became necessary to reorganize the company, and to *re-capitalize* it at a reasonable amount, before the business could be financed sufficiently to demonstrate the earning capacity of the device.

Numerous other cases illustrating the principle above set forth could be given, but they are of such frequent occurrence as to be familiar to almost everyone.

At the same time, the capitalization of a business corporation at an amount less than the immediate or future prospective requirements of the business will admit, may, and usually does, furnish an occasion for reorganization. What may be considered sufficient capital for present needs may prove wholly inadequate after the business has been developed, and unless this contingency has been taken into account at the time of organization the providing of additional capital

is always a difficult question; for the rights of the stockholders will have accrued in the meantime, and their consent to such an object may be necessary and difficult to obtain.

Under the laws of Illinois (and most other States) it is necessary to obtain the consent of stockholders owning two-thirds of the capital stock before an increase of the same can be legally accomplished; and unless the amount of capitalization at the time of organization is sufficient to provide for the future needs of a business the absence of this consent may defeat the raising of such needed capital, in that way.

There is, of course, no arbitrary or settled rule for fixing the amount of capitalization of a business corporation, but the effectual and conservative rule usually adopted for the guidance of incorporators is that the demonstrated or reasonably prospective *earning capacity* of a business should control in fixing the amount. If the question arises in the reorganization of a going business, its past record and reasonable future prospects based thereon, are legitimate subjects for consideration and guidance in fixing the capitalization. As an illustration: Where a business has shown a net profit of 15% on the capital employed, it would not be out of proportion to capitalize a corporation, which was to operate such a business in the future, at three times the amount form-

erly invested therein. On the other hand, if the proposition under consideration is a wholly new business venture, its present and conservatively estimated future prospects should form the basis of capitalization; and these prospects may be arrived at by various methods usually known to those experienced in the particular line of business under consideration.

There are usually but two important considerations in fixing the capitalization of a corporation, and they are, *first*, to enable the company to obtain working capital; and *second*, to protect the rights of the present parties in interest. In accomplishing the former, due regard should be entertained for the opinions and judgment of those who may be invited to invest in the undertaking.

The *manner* of capitalizing a corporation, that is in fixing the par value as well as the classification of stock to be issued—whether preferred or common, or both—is also important, and this should be done at the time of organization, as far as possible, for reasons already alluded to. As to the par value of stock, recent instructors and writers have advocated the omission of any fixed amount in describing the value of shares to be issued; but such an innovation has not met with favor among financiers or those who have to do with actual financial necessities. It is usually unwise and unnecessary to fix the par

value of shares of stock at less than \$100 each, except in mining industries, where a smaller unit of value is customary if not necessary.

In the reorganization of a corporation or business it is frequently desirable that the former owners of the business should continue to be interested in the enterprise, by accepting stocks or bonds, or both, in payment for their interest conveyed to the corporation. This may be accomplished by issuing preferred stock to cover all the interest of such persons, or to issue bonds to cover the conservative value of the tangible property, and common stock in payment of the Good Will and other intangible assets conveyed. If, on the other hand, it is the desire of those interested to ultimately dispose of their holdings entirely (in other words, to incorporate for the purpose of disposing of their business), this may be accomplished through the bond issue, or by the issuing of preferred stock which is *preferred as to the assets as well as to profits*; for they are both more likely to find a ready sale than common stock, particularly while the enterprise is in its infancy.

The question of whether the interest conveyed shall be paid in preferred stock or bonds is simply one of expediency; in either event, the party interested is protected. The principal and controlling difference between preferred stock (such as is here suggested) and bonds secured by a trust deed

on the plant of an established business, is that the bonds secure the holder ahead of subsequent *creditors* and guarantee the payment of a certain rate of interest, while the preferred stock does not insure a dividend unless it is earned, and is not a lien on the assets; and with these differences, they may be considered as of equal value and security. If the business management and conditions justify the accepting of preferred stock of this character, it is frequently desirable to do so in preference to issuing bonds; for with such preferred stock there is no indebtedness against the business to injure its credit and prospects, which would be the case if a bond issue was adopted.

The capitalization of a new venture without a nucleus or established business as a basis, and where the organizers depend upon the sale of stock for working capital, presents more difficulties.

Ordinarily, there are a number of persons interested in such undertaking at the time of organization who propose to contribute a certain amount toward its promotion and establishment but expect to raise the majority of the capital by the sale of stock.

Where such a condition exists, it is advisable to have both preferred and common stock, the proportion of which must depend upon the circumstances of the particular case in hand. An ap-

proved and demonstrated plan, however, is to have the stock divided equally; that is, one-half preferred and one-half common, and to capitalize the corporation at an amount sufficient to make the proceeds from the sale of the preferred stock furnish the immediate working capital, and to leave the common stock for sale for future development purposes, after its earning capacity has been demonstrated; or if it is feasible to do so, have the preferred stock cumulative as to dividends, and preferred as to assets, and to sell as nearly as possible an equal proportion of each class of stock at the outset. In this way, the investor is insured a dividend on one-half his investment, if the business earns enough to pay it; and in the event of a dissolution or failure, he would be protected ahead of common stockholders in the same proportion. Then enough of this preferred stock would be retained to aid the sale of the common stock, should the business require it.

There are numbers of circumstances which permit of the issuing of all common stock, particularly among the smaller undertakings, and of course this is to be recommended whenever the conditions will justify such a course—that is, when the capital necessary for the needs of the business can be as readily obtained in that way.

After the amount and manner of capitalization of a business corporation has been determined

there still remain for consideration the terms and manner of payment of the stock sold or subscribed for.

The statutes of most of the States provide for a certain minimum amount with which a corporation may begin business, and this, of course, must be paid in at the time of organization. In the absence of a statute to the contrary, the payment for all stock in a corporation is a fit subject of contract (as between the subscriber and corporation), and in the absence of any contract such payment is subject to call of the Board of Directors.

In a case where it is necessary to sell stock to be paid for in installments, or to sell stock in small blocks or installments, the approved method for accomplishing this purpose is to issue an "installment certificate" or contract for the ultimate delivery of the regular stock certificate upon complete payment, or when a certain number of shares shall have been paid for, etc. Where it is necessary to adopt such methods for the raising of capital, it is usually advisable to issue such contracts in lieu of stock, and to have their terms provide for the delivery of the regular stock certificates upon a certain specified date, far enough in the future to insure the sale of all stock which it is contemplated will be sold, or which it is deemed necessary to sell, in that way. For, if the

regular stock certificates are delivered as the stock is sold, circumstances may make it necessary or profitable for the purchasers to dispose of some or all of their stock before the company's unissued stock is sold,* and in this way create a competition between such stockholders and the corporation, and, in consequence, demoralize the market and hinder the sale of the balance of the company's stock.

Such a certificate as is here alluded to must be drawn with special reference to each particular state of facts. An approved general form illustrating the application of the plan here referred to will be found in the Appendix.

Recurring to the subject of bonds: Their terms and conditions, and the terms and conditions of the trust deed made for their security, are matters of importance from a practical standpoint, both to the corporation issuing them and to the prospective purchaser in the open market.

While it is necessary that these provisions should be all that is reasonably required for the protection of the investor, care should be exercised in making their terms to suit the convenience and possible contingencies of the business of the corporation; as an example, in the terms of their payment it may be provided that any of a certain series of bonds may be retired by the cor-

* Appendix, page 250.

poration upon giving reasonable notice to that effect upon any annual interest day, and by paying a certain reasonable amount for the privilege, in the shape of advance interest. In addition, the denomination and time of payment should be considered. If it is desired to sell such bonds in a private way, or in a locality wherein the persons interested are known, the making of small denominations may greatly facilitate their sale among small investors; and the time of payment should be placed at a conservative distance in the future to insure the ability of the company to repay the principal when due.

It is often advisable and necessary that the stocks and bonds of a corporation should be listed with the local Stock Exchange, in order that they may have a market among investors in securities, who naturally look to such a source for information concerning the value and regularity of the issue offered for sale.

Such Exchanges have rules for the protection of their members and the public which must be complied with; a copy of that portion of the By-Laws of the Chicago Stock Exchange is given in the Appendix,* and the conditions there imposed are similar in all respects to those of such Exchanges in other cities.

* Page 281.

**Raising A d-
ditional Capi-
tal.**

According to the last official census, there are now in the neighborhood of two hundred and seventy-five thousand manufacturing industries in the United States which employ over seven million persons. Six and three-tenths per cent of those connected with such industries are proprietors and officials who derive their profit and income from the labor and efforts of the remaining ninety-three and seven-tenths per cent of the aforesaid seven million, and this class is constantly increasing in a country like America.

The "easy road" is the popular highway to a livelihood as well as to any other end, and the natural ambition of the worthy members of the employed class is that they shall acquire the necessary education, training and capital to fit them for a position among the aforesaid proprietors, officials, etc.; but unfortunately the principal wealth of this world is in the possession of a very limited number, and in consequence the vast majority of these (as well as all other) ambitious individuals are ever in search of *additional* capital with which to put into execution the various and sundry plans that appeal to them from time to time as being almost certain roads to wealth and power.

If one were to canvass the entire business world in search of a chance for investment that—in the

judgment of the "other fellow"—was *not* sound and promising, it is believed that such an effort would not be rewarded with a single example.

If the glowing descriptions of the numerous "business opportunities" constantly appearing in the daily press were only half true, every possessor of but a few hundred dollars need look no further than that source for certain affluence and important position.

But it is unfortunately true that the vast majority of business and financial opportunities thus offered, seldom amount to more than object lessons for the discriminating, and sad experiences for the credulous or unsophisticated.

The men who live by their wits are ever ready to see opportunities and demands that are not fully supplied in the regular recognized channels of business; and here is truly an opportunity that has engaged the attention of some of the crudest, as well as the most clever operators among men.

It is the knowledge that ambitious and earnest humanity is ever seeking for capital to exploit their projects, that prompts the criminal to invent the numerous devices which he has employed to impose upon the inexperienced.

What is more alluring or attractive than the assurance that sufficient real money can be supplied to finance one's business undertaking, and

this regardless of everything, excepting only a small deposit or fee to cover some trifling preliminary expense or formality, that is made to appear sufficiently reasonable.

The law reports of every state contain accounts of more or less adroit schemes and artifices that have been used to separate the man in search of capital from the money he already possesses, and the wonder is that the most of the apparently modern schemes are simple repetitions of time-honored and familiar devices that have served their purposes in almost numberless instances in the past, and would, therefore, seem to be too familiar to again be productive of results.

The following is taken verbatim (with names and irrelevant matter omitted) from one of our reported cases,* and is here inserted to justify (if necessary), the foregoing statements.

A, "was a clergyman, residing at ———. He was an officer in a corporation owning lead and zinc mines near Joplin, Missouri. Representing the corporation, he desired to sell these mines for the sum of \$50,000. Upon the recommendation of an acquaintance, early in 1905, he wrote to B, who was, or pretended to be, an investment broker, doing business at ——— Street, Chicago, Illinois. A, by the letter, made certain statements in regard to the mines and inquired whether B

* 233 Ill. 560.

would undertake to sell them. B replied, saying that he dealt only in guaranteed securities; that if the corporation would issue debenture bonds for \$50,000, due in thirty years and drawing interest at six per cent per annum, and have them guaranteed by a guaranty and trust company, he could effect a sale of the bonds at par within sixty days. He also stated that the guaranty policy would cost one per cent of the amount of the bonds, or \$500; that his commission for effecting the sale would be \$2,500, and that the guaranty company would require that about \$15,000 of the proceeds of the bonds be deposited with it, to be invested by it to meet the principal of the bonds when they matured. Various letters passed back and forth between A and B, until the 25th of April, 1905, when B wrote A, stating that if immediate application was made to a guaranty company for a policy warranting the bonds he could get the policy in time to enable him to market the bonds before the first of next July, and that if he failed to do so he would return the \$500 paid for the policy. He enclosed a blank application for the policy in the letter, and told A either to act upon that letter or drop the matter entirely. A filled up and signed the application. He also obtained from his bank a draft or bill of exchange for \$500, payable to his own order and drawn upon the——— Loan and Trust Company, of Chicago, Illinois. By en-

dorsement on the back thereof, A made the same payable to the order of N——— Underwriting and Trust Company of ———, the guaranty company to which the application was addressed. The bill of exchange was * * * enclosed in a letter of the same date from A to B, with the application for a policy in the underwriting company. * * * B had selected the guaranty company to which application should be made, and A made the application above mentioned in accordance with B's written directions.

C pretended to be an investment broker and was the agent of the ——— Underwriting and Trust Company. * * * When B received the application and the accompanying bill of exchange by mail, * * * he delivered them to C, who endorsed the bill in the name of the ——— Underwriting and Trust Company, by himself, as agent, and collected the same. On the same day, C in error wrote A, acknowledging the receipt of the draft and application for a guaranty policy, and stating that from what B told him, there could be no doubt that the policy would issue. Up to this time, A had not seen B nor C, but the matter had been carried forward solely by correspondence between A and B. After this time, however, both C and B corresponded with A, and a guaranty policy was sent to him, which, however, did not accord with the application. The bonds were is-

sued but were never sold, and the evidence makes it entirely clear that B never intended to make any effort to sell them. After B had failed to sell the bonds by July 1, A demanded a return of the \$500, but was unable to obtain it. C and B continued in correspondence with A, seeking to explain the delay in the sale of the bonds, until about March 1, 1906, when A instituted criminal proceedings against them, which ultimately resulted in the conviction. * * * ”

It would seem the time were here when even the most indifferent should be able to recognize an absurd proposition, and not continue to encourage a class of shifty humanity, in a calling that would be obsolete, if it were not for the innumerable opportunities presented and often virtually thrust upon them by such seekers after capital.

It would also seem that the subject of business financing is not more mysterious or incomprehensible than other every-day undertakings. It certainly should not be; yet how often do we hear of men engaged in important business affairs suffering substantial losses through schemes substantially of their own creation to obtain investors, or what is equally surprising, being influenced by the absurd representations and undertakings of those who, if encountered in familiar business transactions, would not be seriously considered.

Pilots of finance in undertakings of this charac-

ter exist only in the imagination or to mislead; to be sure, there are a few reliable brokers in every large city who frequently handle unlisted securities, but they do not sell kindergarten creations nor securities that have not a well known or ascertainable value.

As for established banks and like financial institutions generally, they are as likely to be interested in legitimate and sound offerings as any individual, and unless the opportunity offered meets the requirements and approval of either the legitimate banker or broker, the would-be financier can be of no service.

The business enterprise of merit which is properly organized and has complied with the rules of recognized institutions for securing capital, invariably receives all the consideration it is entitled to, and obtains such assistance as its opportunity warrants when properly presented by or on behalf of those who are immediately interested and identified therewith; and the chief qualification of "an outsider" that is not equally possessed by the intelligent business men interested *may be* in the preparation and actual *presentation* of a business opportunity.

If the corporation is legally formed with due consideration for its possible future developments and financial needs, and the business has been legitimately and successfully conducted, and its

books and records accurately and systematically kept, the question of raising additional capital is comparatively a simple one, and its acquirement is based primarily upon the financial responsibility and business prospects of such an enterprise.

Conditions that influence sales of stocks and bonds are often created at the time of the organization of the corporation creating them. It is when some or all of the foregoing features are lacking that difficulties are encountered and failures occur, where the business itself would otherwise justify a different result. And, it might be added, that the majority of failures are, in some measure, at least, due to the fact that the proper attention has not been given to some practical question in the creation of the securities to be sold or in the organization, or other essential matters, at the inception of the undertaking. When the corporation is confronted with embarrassing questions of finance, the defects, if any, in its formation or subsequent conduct "stand out in bold relief," and often make it quite impossible to accomplish the result desired, without a reorganization.*

Capital is a power well known to the average possessor, and it is necessary to take this fact into consideration when it is sought after; then, the viewpoint of the man with money must also be taken into account. While there are many sel-

* See "Reorganization," page 129.

fish and grasping persons, the average business man looking for a business opportunity is fair and reasonable from his point of view; and if that can be ascertained, and his requirements fulfilled, the matter of interesting him in a business is simplified.

The business corporations which are ordinarily seeking capital might properly be included within the following three general classifications, and they will therefore be here adopted, and considered in their order, namely:

First: The new undertaking which has passed through the experimental period (which is usually the first year), and finds itself without sufficient capital to accomplish the original objects.

Second: The established business which has been built up by a firm, individual or retiring corporation, and transferred to a new corporation, but for some reason the capital at its disposal proves insufficient.

Third: The business with visionary plans, and whose objects are impractical, desiring to obtain capital for its conduct or continued operation.

In considering the first class of enterprises named it will be assumed that all necessary and proper steps have been taken in the organization, and that the business itself is of recognized merit. It is also here assumed that no mistakes had been made, either in the domicil, amount of capitaliza-

tion, or other practical features, and also, that the business itself shows a fair and reasonable prospect for ultimate success.

In this case, as in all others, the particular circumstances must govern; but generally the *increasing* of the capital stock of such a company is the most satisfactory method to acquire additional capital, particularly from a financial standpoint. Of course, the sale of such stock is necessary, and if the business will admit of additional executive assistance, the inducement to an investor of filling an office of responsibility—with reasonable compensation—is always a great help and an important element in effecting such a sale.

The sale of a large issue of stock is always difficult, unless the corporation is well known, in the hands of recognized dealers in the line of business, or its stock is listed on the local Stock Exchange.

The issuance of bonds or preferred stock with a common stock *bonus*, is always to be discouraged from a business standpoint, if from no other; and the conservative man of money is rarely, if ever, influenced thereby.

Many of the questions here presented have been already considered in determining the capitalization of a new corporation—under the preceding heading—and therefore need not be repeated; the general principles there announced

will be found useful in the solution of questions of finance whenever a business falling within this classification requires financial assistance.

The next class of business corporations seeking capital, and referred to above, are not as numerous as the first. For, assuming that no mistakes have been made in the essential features of reorganization and that the business is established, little difficulty should be met in raising any reasonable amount of necessary capital consistent with the security to be given.

Here we are also confronted with the peculiar, important circumstances which surround every case of this character. Generally such a business has assets of a permanent nature—often a plant which would readily be accepted as ample security for a bond issue sufficient to provide the necessary working capital; and where this can be done to advantage, it is well to be considered, as such bonds usually are salable at par, and bear a low rate of interest and can be made to mature far enough in the future to make such a plan advisable from every standpoint.

Then the question of changing location is to be considered here, as it is in the class of companies first above named; numerous outlying towns and localities desire additional manufacturing industries, and they are frequently prepared to provide locations and financial assistance

either in the form of a bonus, or by subscribing for a certain amount of additional capital stock. These opportunities may be investigated, and reliable information obtained by consulting the Industrial Agents of the various railroads, whose business it is to give assistance in such matters, both to the industry seeking a location and to the town in procuring the enterprise desired. Very frequently in the reorganization or combination of two or more kindred industries, the circumstances will justify the issuance of special preferred stock. An example of such a case may be found illustrated in the Appendix* where the formal offering there shown both demonstrates the method to pursue in setting up and making the necessary showing to interest capital, and the approved form of offering the stock to be sold.

The third class of enterprises named comprise the majority of the seekers after capital, and this fact alone makes it more difficult for the legitimate or worthy enterprises to secure such assistance.

Manifestly, the greatest benefit to all persons interested in such a company would be to wind up its affairs as speedily and economically as possible; but it is safe to predict that few readers of this book will ever concede that their undertakings or business ventures fall within the lines here drawn.

* See Appendix, pages 229 and 234.

It is surprising, however, to know the large percentage of enterprises struggling to keep alive and going which in reality may be fairly considered within this class.

It is not infrequent, however, for the lawyer to be called upon to scrutinize the affairs of such enterprises, and he should be qualified and ready to advise his client, not alone upon the legal status of affairs but upon the general aspect of the business and its prospects; and this he may do by simply investigating along lines that are well defined. For instance, a company that to all intents and purposes has "stock-jobbing"* for its principal object should be avoided and condemned; a company organized for the purpose of conducting some speculative venture at a great distance is suspicious; a business with vast natural resources wanting "a small amount of money for development purposes," which should readily be obtained upon the company's alleged assets, is usually a fraud; the company that has been incorporated without an established business for a nucleus, and is dependent upon the sale of its stock for working capital, and which has sold a portion of its stock to a number of small investors, the proceeds received from such sale being insufficient to demonstrate the success of the business contemplated, or to materially advance it beyond the organization or

* See "Stock-Jobbing," page 143.

experimental period, is, *as a rule*, of doubtful prospects—and so on.

In fact the earmarks of unworthiness are as apparent in a business enterprise as elsewhere, and are discernible by proper investigation, and a proper knowledge concerning the subjects herein treated.

No one is justified in undertaking a business venture without at least the moderate capital usually required to carry it on (or the means of raising such capital), and trusting to financial accommodations and credit for success. It is undoubtedly true that no one who has tried to establish a business without a suitable capital, even if he has succeeded, would advise another to attempt to do likewise; for it involves an amount of anxiety, labor, embarrassment and hazard which is unpleasant to reflect upon. To do business altogether on credit requires a fortunate combination of circumstances to make it successful that no prudent man would predict.

It might be said with propriety that the universal law of trade is that the enterprise which attempts to conduct its business upon borrowed capital alone must sooner or later fail—that is, where the company attempts to conduct its business upon financial accommodations secured from regular sources, such as banking houses, brokers, etc., upon trade paper. At the same time, a com-

pany may do a largely *increased* volume of business upon such accommodations, particularly where the principal capital required is only necessary at stated periods; in fact, a large Chicago corporation practically conducts the principal volume of its business upon funds secured in that way, and loans its own capital through banking and regular financial channels, upon a higher rate of interest than it is required to pay for its own accommodation. But it is not such a corporation as the ordinary business enterprise could safely imitate; its securities or trade paper could be converted into money at any time and under any circumstances, without difficulty.

There is a tendency among aggressive business men to "mortgage the future," so to speak, and this without regard to repayment. The securing of judicious, long-time loans upon a bond issue where the business requires additional capital, is not alone a saving in the rate of interest but renders the undertaking less hazardous, and more convenient and certain of payment out of the profits that may be safely estimated; besides, the bonds of a staple business concern, with tangible assets, are invariably in good favor with investors. Many of the practical questions concerning the issuing of such bonds and preferred stock as well, have already been considered.*

* See "Capital, Bonds and Stocks," also "Capitalization of Corporations."

In regard to the extent to which the credit of a business enterprise may safely be extended—that is, the proportion which the capital of an enterprise should bear to its liabilities—necessarily varies with conditions. It has been stated, however, by eminent and experienced financiers that a man should not extend his business more than three times the amount of his capital under the most favorable circumstances, and if it be a large business, not more than twice his capital.

We have already alluded to what has proven to be a very satisfactory method for the raising of additional capital, under ordinary circumstances, and that is by the issuance of bonds, drawing a reasonable rate of interest, that may be convertible into stock within a certain given period, at the option of the holder. This enables the purchaser of such bonds to avail himself of the privilege of becoming a stockholder at any time within the period provided in such bonds, should he so elect, after the business has demonstrated its merit, and the enterprise is thereby provided with the necessary additional capital, which it can repay out of the profits.

Many business men will readily invest in such bonds, with the privilege of changing the form of investment after the business is established, who would not in the first instance purchase stock.

**Transferring
an Established
Business to a
Corporation.** The topic of this section has furnished the material for much of the unfavorable criticism which has been made upon the corporate plan and abuses of the corporate system; and this is made the subject of a separate discussion under appropriate headings.* At the same time, some of the legitimate advantages offered through the consummation of transactions of this character have already been pointed out.†

In the preceding pages we have necessarily discussed many of the important questions pertaining to, and which invariably arise in the transferring of, an established business to a corporation. Those heretofore discussed have had to do with the advance financial arrangements and objects to be accomplished rather than to the subsequent rights of the parties to be protected. In the following pages particular attention is given to the substantial benefits to be derived from the corporate plan of conducting business, as well as the rights of the parties interested therein.

It is through transactions of this character that advantages are obtained by the owners of a business, such as the preservation of the good will, facilitating the sale of a part or the whole of the

* See "Consolidation of Enterprises and Stock Jobbing."

† See "The Corporation and Its Advantages."

business, and the obtaining of an advantageous price for the business transferred, etc.

The opportunity last referred to is frequently abused; that is, the valuation placed upon a business about to be transferred to a corporation is inflated, and the question frequently occurs "to what extent may a business or property be overvalued without rendering the parties in interest liable therefor?"

This question has been the subject of much litigation, and different courts have taken different views thereon. Without attempting to enumerate the rules announced in the various decisions, the most favored rule, and the one to be almost everywhere regarded as safe, reliable and sound, is that if the directors act in *good faith*, and the property transferred has a substantial value, and there is no fraud connected with the transfer, their valuation is final, even if excessive.

A different rule, however, obtains in some of the States, where the statutes make the action of the Board of Directors in relation to such matters final in the absence of *actual fraud*. This rule obtains in Delaware, Maine, New Jersey and New York; and in some States, where mines and mining is the chief subject of corporate organizations, this rule is recognized either by statute or by the courts to encourage development of the State's mining resources.

More latitude is everywhere allowed in the valuation of what are known as speculative assets than where the property is staple and easily valued; and in every case the question of what the property is worth *to the corporation*, rather than what it is worth to the individuals selling, will govern.

A business that has been established by an individual or an association of individuals under a firm name, usually possesses a valuable property right in the *name itself*—which is in reality the subject-matter of the good will. While the good will of a firm, or individual doing business alone, may be the subject of transfer and sale, and therefore valued and conveyed, still it is never possible to utilize and protect this form of property, or obtain its full value, except by transferring the same to a corporation. The reason of this is that while the trade name may be thoroughly established and the means of influencing trade, it is, in a measure, perishable, and loses much of its value once the individuals who have created it are known to be no longer its owners; while if it is transferred to a corporation organized by the same persons who established the name, it becomes permanently associated with the corporation and with the other advantages that accrue to the trade name of a corporation (that are not possible to an indi-

vidual) it thereby derives a permanency and utility that cannot ordinarily be lost.

It is these and other considerations which justify the adequate valuation of the immaterial assets of a firm or co-partnership when transferring the same to a corporation for the ultimate purpose of effecting an advantageous sale—enlargement or permanent establishment of a business.

There is much of the “personal relation” existing between the proprietor of a business conducted by an individual or co-partnership and the patrons thereof that has its advantages, and in some degree at least—and in certain forms of enterprises—may argue in favor of the personal as against the impersonal, *i. e.*, corporation relation; but the details of the business of a corporation can and *should* be so organized as to overcome this objection—that is, by creating personal responsibility, if not a personal interest for department heads in the various important departments of the corporation; and in that way retain the personal interest and responsibility so essential to the welfare of every business conducted upon the competitive system.

As to the approved manner of transferring assets of an established business to a corporation for money, bonds or in payment for its stock: if the business is to be valued and purchased from

an inventory, where the property conveyed is itemized, the resolution of the Board of Directors taking over or purchasing such property should recite that the property had been itemized and valued at the *aggregate sum* of whatever is to be paid for the business conveyed; and the articles named in the inventory may, with propriety, be copied and made a part of the bill of sale. If, on the other hand, the business is purchased in bulk—or the amount of property estimated—then the resolution of the Board should recite that the property had been appraised in bulk and valued by the Directors at the total amount to be paid therefor.

It is essential that all due formality should be observed in the purchase and transfer of assets to a corporation in payment for its stock or otherwise, and where it is feasible, the proposition to sell should be made to the corporation by formal writing.* This will enable the officers to make proper investigation of the business offered, and at the same time the written proposition will form the basis of an appropriate resolution of purchase and a complete contract of sale when formally accepted.

If there is real estate involved in the transfer, naturally the title will be carefully examined by competent legal counsel, before passing upon the

* See form in Appendix, page 229.

proposition to purchase; and in such cases the resolution should recite that such examination had been made and the title found merchantable or otherwise, and that the proper conveyance or title deeds had been executed by the owner or owners and tendered to the corporation at the time of the proposed formal acceptance of the offer by the Board of Directors.

In the Appendix hereto, will be found a general form of resolution which, according to the facts there assumed, purports to purchase and take over—through the commissioners appointed by the Secretary of State of Illinois—from a corporation that is in the process of reorganization, an established business in payment for stock subscribed for by the reorganizer mentioned in the Reorganization Certificate shown. The resolution there given will suggest the method, and also the form of resolution applicable for the purchase of any established business by a corporation except that in the case there assumed no written proposition was made or necessary, on account of the fact that the purchasing company was incorporated for the express purpose of operating the business purchased, and the directors are assumed to be all the stockholders as well, and all present and acquiesce in the terms of purchase and sale. In such a case, the peculiar facts there assumed (for the purpose of illustrating an approved plan

of effecting a reorganization which will be further explained under a subsequent heading), dispense with such written proposition.

In every case where a business is transferred from one or more of the directors, or parties in interest, to the corporation, it is always advisable to have the formal consent of the stockholders to such a purchase; and this may be done by convening a special meeting of the stockholders for that purpose, and submitting the question of purchase to a vote, and having the action of the stockholders in that regard, a matter of record. Such a resolution would simply recite the facts, and *authorize and direct* the Board of Directors to consummate the transaction and purchase the business at a given price, or at the best price obtainable. And, it might be added, that the consent of the stockholders to the acquiring of a separate business, or to the transaction of any *unusually* important business, is always to be recommended. Particularly is this advisable where the stockholders are few, or the corporation small.

In acquiring property a business corporation usually stands in the same position as that of an individual, and all the important questions that would concern a natural person relating to title, incumbrances, right to transfer, etc., are necessarily present; so when a going business is acquired by one corporation from another it is

necessary to see that all formalities are observed by the *selling* corporation as well, and that lawful authority is obtained to make such sale.

At common law the sale of a going solvent and prosperous business could not be affected without the unanimous consent of all stockholders of such corporation; however, the statutes of the various states furnish authority for such transfers, but require the consent of a large majority of the capital stock issued. If, however, the selling corporation is insolvent or in a failing condition, or unable to succeed in its undertaking, a recital of such facts in the resolution of sale will usually authorize a sale of all the company's assets by the Board of Directors alone.

CORPORATE MANAGEMENT

FRANK'S "SCIENCE OF ORGANIZATION," ETC.

CHAPTER III.

CORPORATE MANAGEMENT.

Directors, Officers—Their Duties and Liabilities.	Corporate Records and Books of Account.
Stockholders' Rights and Liabilities.	Examination of Books and Records.
By-Laws and Their Uses.	

Directors and Officers—Their Duties and Liabilities. The duties and liabilities of a director of a business corporation are co-extensive—that is, his powers and authority on the one hand are of such a nature that they lead to a corresponding responsibility both to the corporation and its creditors. As has been heretofore shown, the authority to bind the corporation emanates from the Board of Directors; and in consequence, the officers are responsible to them. The officers are chosen by the Board of Directors, and, unless restricted by the by-laws, they may be removed by the Board for sufficient cause; and if the by-laws so provide, any officer may be removed at the pleasure of the Board.

Directors cannot, however, act individually; they must do so as a body. That is, no legislation

on behalf of the corporation can be enacted except by the Board in meeting assembled, and the will of the Board when thus indicated, is to be carried into effect by the officers of the corporation.

The peculiar characteristics of a corporation often renders notice to a director or officer also notice to the corporation; and this is important in relation to the conduct of all corporate business; such notice simply means *information*.

In order to charge a corporation with such notice, however, the directors or officers must be shown to be acting for the corporation at the time the notice is received, and also that the employment of the director or officer concerns the subject-matter of the notice; in other words, the director or officer must be then engaged for the corporation in such a way as to render the notice appropriate to his office or employment.

Notice to a Board of Directors *while assembled*, and such notice to one of them, who afterward communicates the same *to the Board in session*, is sufficient notice to the corporation in any event.

Under the common law, directors are liable for issuing stock as fully paid, when in fact the same is not so. They are also liable for the payment of dividends out of the capital stock of the company, and for any *ultra vires* acts and fraud generally, as well as for negligence which results in a loss to the corporation. In other words, they

are responsible for many acts of omission, as well as commission.

Under the statutes of the various States they have a further liability imposed, whereby they are held to the responsibility of a trustee under certain circumstances. They are always trustees for the creditors of a corporation, and also in certain dealings in relation to the property of it. The question of their dealing directly with the corporation is frequently the subject of litigation, and they are invariably held to a strict rule of conduct in such matters.

A business corporation has no power or authority to loan money, except it be to further the ends of its business; hence it could not lawfully do so to a director. And the rule that one cannot properly occupy the dual position of buyer and seller is particularly applicable to directors of such companies—to the extent that any secret advantage thus acquired may be recovered from such directors. At the same time, they may not abuse any information acquired as a director, or obtain secret advantages therefrom to the detriment of the company.

A safe rule for the director to adopt is to act in all things pertaining to his office and the company of which he is such a director in the same way as he would act if the business transacted for the corporation was his own exclusively.

A director is not disqualified to act in any official capacity for his corporation on account of his being a director. In fact, it is usual for directors to be also the officers of the corporation. Particularly is this true in small or medium-sized companies.

It is always necessary that there should be a President and Secretary in every business corporation, and it is usual and necessary under the laws of some States (*e. g.*, Illinois) to have a Treasurer, as well.

The number of officers that a company may have is limited only by the will of the Board of Directors. It is frequently provided by the by-laws that certain officers of the corporation should also be directors, and this is proper and convenient; for, if they are directors as well as officers, they are at all times conversant with the consensus of opinion of the Board in relation to its policy, and upon all matters pertaining to the business.

The powers and duties of the officers of a corporation, (so far as the corporation itself is concerned) depend entirely upon the provisions of the by-laws, and the delegating of such powers, and the classification and the stating of the duties of the various officers is a subject that should receive special attention at the time of the organization of every corporation.

By properly defining the powers and responsibilities of each officer the best possible results are obtained, and each officer has a certain clearly-defined responsibility; besides, any possibility of controversy over conflicting authority is thereby averted.

The compensation of both directors and officers is a proper question for the directors themselves; it is a proper subject of resolution by the Board of Directors, enacted and recorded on the records of the corporation prior to the performance of the service in question, and unless abused, the action of the directors in this regard is final.

Directors are not entitled to compensation unless it is expressly provided that they shall receive pay for their services; and a salary voted to a director after the services have been performed is voidable by the stockholders. Directors are usually vitally interested in the corporate enterprise, and their election as directors is usually due to that fact. A director who performs extra services, outside of his duties as a director, however, may be entitled to compensation therefor.

The established rule concerning compensation of directors is that authority for its payment must be obtained without fraud, either actual or constructive, and that the amount thereof must be reasonable for the services performed.

A salary paid to directors under certain circumstances, *e. g.*, when the corporation is insolvent or financially embarrassed, or where the amount is excessive or paid out of the capital of the corporation to the detriment of the stockholders, may be recovered from the directors by an appropriate proceeding.

Another familiar principle concerning compensation of directors and officers alike is that where the salary is authorized by the vote of the party receiving it—that is, if his vote is necessary to its creation—such compensation is illegal. At the same time proper and adequate compensation may be voted directors and officers, and the amount of such compensation must be governed by the circumstances of the particular case.

There is a growing disposition among legislators generally to increase the visitorial power of the State over corporations,* and to this end require certain reports to be made by officers periodically concerning their affairs, such as the furnishing of names and addresses of all directors and officers; whether the corporation is availing itself of the privileges conferred by its charter; the amount of the capital stock paid in since its organization, etc., and providing certain penalties and responsibilities for such officers for the failure

* Many states have established "Commissions" for regulating corporate affairs since this text was written.

to comply therewith. In addition to such penalties imposed by the State, an officer may be held liable to the corporation for any injury resulting from his negligence or failure to comply with such laws; and generally an officer may be held liable to the corporation for all negligence or fraud.

Nearly all the States now have special laws regulating foreign corporations; that is, where corporations organize in one State and undertake to do business in another, in the latter State they are regarded as "foreign corporations." The special acts of the various States in relation to such foreign corporations are far-reaching in their effect, as will be seen upon reference to the copy of such Act now in force in the State of Illinois, given in the Appendix.* It will be observed that in Illinois a foreign corporation is obliged to comply with the act referred to, before doing business in the State. What constitutes "doing business" means the establishment of a local agency or branch or other more or less technical location for the carrying on of the business; in which event, it is necessary to designate some person upon whom service of process can be had in case of litigation, and to otherwise comply with such act. Upon the failure of such foreign corporations to comply with the terms of such local laws, no contract can be enforced by it in the foreign

* See page 305.

State; and it has been held in Illinois that subsequent compliance with such provision of the law will not entitle such foreign corporations to enforce a contract that was made prior to such compliance.

Stockholders' Rights and Liabilities. The functions of stockholders in a business corporation are limited; the general and principal rights of the stockholder are (a), to form the corporation, or bring it into existence in the first instance; (b) to elect its Board of Directors from time to time; (c) to make its by-laws, unless that power is delegated to the directors; (d) to increase or decrease the capital stock; (e) to authorize all amendments to the charter; (f) to participate in the dividends; (g) to dissolve the corporation; (h) to authorize the giving of mortgages, in case the statutes of the State require it; (i) to examine the books and records of the corporation at all reasonable times; (j) to pass upon the necessity or advisability of the sale of the entire business.

The liabilities of a stockholder are even less than his rights as such. It might be said, if the corporation is regularly and legally formed, that the stockholder's liabilities are limited to the unpaid portion—if any—of the stock held by him;

and unless the laws of the State under which the corporation is formed are complied with the stockholders are liable in the same manner and to the same extent as partners.

In some States the stockholder has a liability in addition to the par value of his stock. This liability is expressly imposed by the statutes of such States. Such liability is strictly construed by the courts where the same exists, and it is now generally confined to the claims of employees, etc.

In discussing the liabilities of a stockholder, they will be referred to in the order in which they naturally arise—that is, the liability of an *original* stockholder for any unpaid portion of the stock standing in his name, and in connection therewith, the liability of the transferee of such stock.

Many of the States hold the transferee liable jointly with the original subscriber or owner of stock, where the same has not been fully paid for at the time the stock was issued.

It has been already shown that stock originally issued upon *inadequate consideration*, *i. e.*, where property has been fraudulently accepted by the directors in exchange for stock, or where the value of the property has been flagrantly inflated, is not thereby paid for, even as between the corporation and the seller, notwithstanding the stock certificate upon its face purports to be “fully paid and non-assessable.” In such cases, the trans-

feree is liable *jointly* with the transferor (especially to creditors of the corporation) for the differences between the value of the property received by the corporation and the par value of the stock issued therefor.

Where the statutes of a State do not make the action of the Board of Directors in this regard final in any event, the above mentioned rule applies to both the original owner of the stock and any subsequent transferee; and the only difficulty in determining the liability of a subsequent stockholder in such a case is to establish sufficient notice to the transferee of unpaid stock, or to determine what circumstances or state of facts will constitute legal notice that the stock accepted by him is not fully paid, when the stock certificate recites on its face that the stock thereby represented is fully paid and non-assessable.

The rule laid down in Illinois is that an exchange of property for stock in a corporation must constitute a valid contract of bargain and sale in good faith and by the result of honest judgment of the Board of Directors of the corporation accepting such property, or the person to whom such stock is issued is liable, both to the corporation and its creditors for the difference between the actual value of the property conveyed and the face or par value of the stock received; and as to *what* constitutes *constructive notice* to

a subsequent purchaser of such stock may be illustrated by a leading case in Illinois on that question:

A corporation was organized for \$1,000,000, and all its stock, excepting two shares, was issued for an interest in a patent. The stock certificates issued for this invention recited on their face that the capital stock represented thereby was "fully paid and non-assessable." Some of this stock was sold or conveyed to a third party, namely, one who was not originally connected with the organization of the corporation. The corporation in question failed, and the creditors instituted appropriate proceedings for the purpose of holding the assignee of such stock jointly liable with the original owner.

In holding that the transferee *was* liable as contended, the Supreme Court of Illinois said: "It is not conceivable that a person of ordinary intelligence and prudence buying shares of stock in such a corporation would not become advised as to what property the corporation had. * * * It is clear that appellees knew that the corporation had no money and no property aside from the patent, and it would not be creditable to them to say that they believed the patent to be worth \$999,800." * * * "We regard the proof as establishing the fact of notice to appellees of the transaction and over-valuation. They knew that

the corporation did not have a paid-up capital of \$1,000,000 and that * * * had not paid for the stock, unless it was given for the patent.”

Hence it will be seen that not only the original subscribers of stock may be liable for any unpaid portion thereof, but that in many cases subsequent owners of such stock may be likewise liable. In the language of the Illinois Supreme Court: “The relation of the stockholder who has not paid for his stock, to the corporation or the creditors, is the ordinary one of debtor.”

The presumption is that a corporation has, or at some time had, money or property equal in value to the amount of its capital stock, and creditors have a right to presume that such is the case; hence the issuing of stock for less than the par value is ordinarily held to be a fraud upon the law, creditors and subsequent purchasers. It is *ultra vires* of the corporation to issue stock for less than its face value in money, or money's worth, and creditors (and under certain circumstances other stockholders) may insist upon the balance being paid into the treasury.

There is a rule, however, that where a corporation has increased its capital stock, and becomes insolvent, it may then issue any portion of such increased stock for the best price obtainable and no one will be liable thereon, especially to existing creditors; but such a practice is not

to be encouraged, particularly where the rights of subsequent creditors are to be considered.

One of the fundamental principles in the law of corporations is that the majority may exercise the right to control the corporation's affairs. This right has suggested many opportunities for the perpetration of fraud upon the minority stockholders, and the repeated instances of such attempts which have come before the courts of last resort have developed a system of jurisprudence for the protection of the minority stockholder.

Some of the familiar methods of attempting to take advantage of the minority stockholder are for the majority to vote large salaries to themselves, withhold dividends, incorporate an auxiliary enterprise, and favor such undertaking at the expense of the parent company, and various other devices, which all tend to the same result, namely, the detriment of the minority stockholder.

Majority stockholders, through directors who are their tools, often perpetrate such wrongs for their direct benefit. The dummy director is now an old device in the law of corporations, and courts of equity are inclined to look behind all such devices to ascertain the real parties in interest.

The language of the United States Supreme Court announces the modern rule in relation to

this subject, to-wit: "When a number of stockholders combine to constitute themselves a majority in order to control the corporation as they see fit, they become for all practical purposes the corporation itself, and assume the trust relation occupied by the corporation toward its stockholders."

While courts of equity will interfere for the protection of minority stockholders, they will not undertake to control the policy or business methods of the corporation, so long as they are conducted in *good faith*, although it may be seen that a wiser policy might be adopted, and the business more successfully conducted if other methods were pursued. It is in cases of fraud, or where some undue advantage is being taken of the minority stockholders, that courts will intervene and afford relief.

It is not infrequent that stockholders undertake to make an agreement among themselves whereby certain policies shall be carried out; that is, where certain individuals shall be retained in office, and otherwise attempt to regulate the voting of stock, and in that way control the corporation.

Another, and not unusual question, is that of limiting the sale of stock either to a class of persons, or to give one another the first opportunity and right to purchase stock which may be

offered for sale. All of these objects are difficult to accomplish, for the reason that they are fundamentally against public policy.

Any contract which amounts to an unreasonable restraint of trade is illegal—that is, where the contract attempts to perpetually or unreasonably deprive the stockholder of his right to sell or control stock, or his right to vote thereon; but an agreement to place stock in *escrow* for a reasonable time to accomplish a lawful purpose or to insure the right to purchase such stock at a given price is legal. And a condition inserted in the body of the stock certificate, regulating the transfer of such stock, either to a class of stockholders, such as dealers in a given line of trade, or to existing members may be legal.

In addition to the foregoing, any lawful object may be accomplished in the regulating of transfers of stock, but as before intimated, the terms employed in accomplishing such objects must necessarily receive careful attention.

A stockholder's right to vote upon his stock, either in person or by proxy, is necessarily an important one. In order that the minority stockholder may have representation in the directory, the laws of most States provide what is termed, "cumulative" voting; *e. g.*, where the number of directors is five, and the stockholder votes his shares of stock under the cumulative system, he

would have five votes for each share of stock held by him, which he could cast collectively for one director, or divide them among the five, as he might choose.

In case a stockholder cannot be present at the meeting of the stockholders of his corporation, he may appoint a *proxy* (to represent him), with full power to exercise all the rights of a stockholder; a proper form of such proxy will be found in the Appendix.* Such proxies may be made for a single meeting or for a given length of time, and until acted upon, they are subject to be revoked at the will of the stockholder.

By-Laws and Their Uses. The importance of a proper code of by-laws for the government of a corporation cannot be overestimated. They are the *internal* law for the government of the corporation itself; the duties and powers of its officers emanate from them, and the rights of the stockholders are often curtailed or enlarged by their provisions.

By-laws may not contravene any provision of the charter itself or the laws of the State under which the corporation owes its existence, nor the common law, or be against public policy or the laws of the land, and they may not be inequitable or unjust or unreasonable in their nature.

* Page 281.

Aside from these limitations they may contain any rule or provisions that the framer may choose to incorporate therein.

It is always wise to include in the by-laws of a new company the well-settled important rules of law of the State of its creation, governing its conduct for the guidance of the directors and officers. Frequently it is desired that the duties as well as the authority of each officer should be clearly and minutely defined in order that no conflict between such officers shall occur, and this is always to be commended where such a course is practicable or feasible, but in small companies it is unwise to burden and handicap the management with unnecessary rules which would interfere with the conduct of the business itself.

Every stockholder and officer is bound by the lawful provisions of the by-laws, and this whether they ever consented to their enactment or ever knew of their existence, but there is a different rule obtaining in regard to the public. The by-laws of a corporation should not affect strangers dealing with the corporation, and the violation of a rule contained in the by-laws will not relieve the corporation from liability to third persons. At the same time, creditors may insist that the provisions of the by-laws shall be enforced, and, of course, the stockholders have the same right.

Forfeitures, fines and the like can be enforced

only through and in accordance with the by-laws, unless there are statutory provisions therefor; and the question of a stockholder's right to vote may be—within certain lawful limits—regulated thereby.

It is impossible to suggest an arbitrary or "stock" form of by-laws, as the exigencies and peculiar conditions of each organization must be taken into account; but the form of by-laws given in the Appendix hereto,* will be found satisfactory, or to contain useful suggestions in the preparation of such by-laws for any ordinary corporation, particularly where it is organized under the laws of Illinois.

In the organization of companies under the laws of the various States, the by-laws should be drawn in conformity with such local laws, and invariably require the utmost skill in their preparation.

The right to make by-laws is primarily in the stockholders of the corporation, unless that power is delegated to the directors, either by charter provision or statute law of the State where the corporation is created. The tendency of modern legislators is to delegate the power to the directors of the corporation, and where the right to make by-laws is vested in the directors, either by statutes or by the stockholders themselves, the

* See page 253.

directors also have the power to amend or repeal the same.

The difference between the by-laws of a corporation and its formal resolutions is chiefly the permanency of the former. While both are subject to amendment or repeal, unless the power to act upon the resolution is limited by the by-laws, it is subject at all times to the will of the directors or stockholders, as the case may be. For this reason, it is customary to make the question of compensation of officers a subject of special resolution, and to have such resolution embody the amount of the compensation to be voted, and to conclude with the phrase "subject to the further action of this Board." The purpose of this limitation is to make the compensation of an officer wholly subject to the will of the Board of Directors—that is, to leave the power and to facilitate the right to change such compensation as the circumstances may suggest.

It is not infrequent that the directors and officers *themselves* violate or ignore important provisions of the by-laws. Where this has been done, it is well to ratify the acts done contrary to the provisions of the by-laws, where the same are not contrary to the interests of the corporation itself. Such ratification may be accomplished by proper resolution adopted by the Board of Directors in meeting assembled.

It should be borne in mind that the by-laws of every corporation, as well as all important resolutions of the directors, should be accurately transcribed upon the Minute Book of the corporation, and preserved in this way.* In the case of large corporations it is not infrequent that the by-laws are printed and circulated among the members.

**Corporate
Records and
Books of Ac-
count.**

The books of account that are peculiar to corporations, and not in use by general unincorporated concerns, are few. They consist generally of the Minute Book, Stock Certificate Book, Transfer Book and Stock Ledger. Aside from these, it is not unusual for the treasurer to have a Private Ledger in which to keep Controlling Accounts. Besides, it is customary for all modern business corporations to have a more strict and comprehensive System of Accounting, particularly a complete Voucher System, by which an accurate and conclusive accounting can be furnished of all departments, and at any and all times, for the benefit and information of stockholders.

The statutes of a few States of the Union require other corporate books to be kept, known as Books of Publicity, but they are the exception.

* Under the law of some jurisdictions (South Dakota, for instance), by-laws are not operative until so recorded.

Perhaps the book that is universally conceded to be first in importance among those peculiar to the corporation is its Minute Book—by which is meant the book wherein the acts and proceedings of the corporation itself are recorded, and particularly the acts that require sanction or authority from the Board of Directors; and these include the Record of the Adoption, as well as a Transcript of the By-Laws and their Amendments.

When the corporation is sufficiently large to justify it, there should be two separate Minute Books, one for the stockholders, and the other for the Board of Directors, in which to record the meetings and proceedings of each; and these books should be securely bound or protected against any possible forgery or important change without due authority.

The most approved and convenient plan of keeping the Minute Book of the corporation is to have a Certified Copy of the Charter attached to the first page of this book, or to have the secretary copy the Charter verbatim at the beginning thereof. Then the minutes of the organization meetings should follow in their proper order and dates.

The By-Laws should be recorded elsewhere in the Minute Book, preferably at the back (where bound books are used), leaving enough unused

pages after their recording to insert any and all amendments that may be made to the By-Laws. After this the minutes of each succeeding meeting should be recorded as they occur, following, of course, the meetings to organize.

It is not necessary that the minutes of meetings be written up at or immediately following the meeting to be recorded, nor is it necessary that the minutes be in the handwriting of the secretary; but it is advisable that the minutes of every meeting should be promptly recorded in order that no errors or omissions may be made, and in every case they should be signed, at least, by the secretary.

Care should invariably be taken to preserve all documents and writings coming into the hands of the secretary, such as proxies, original motions and resolutions that have been reduced to writing by the member offering the same. After such documentary records have been recorded they should be preserved for future reference or comparison by a proper filing system.

If the minutes of meetings are not taken in shorthand, there should be notes, at least, made of all important transactions, and the minutes should then be written up from such notes.

It is unquestionably advisable to approve the minutes of all meetings at the next succeeding *regular* meeting of the body, and this may be done

by proper resolution after the same have been read; but the approval of the minutes of a regular or special meeting of a Board of Directors of a corporation cannot, in the absence of a special notice being given in the call therefor, be amended or approved at a subsequent special meeting of the same body, unless, of course, all directors are present, and the amendment or approval is unanimously concurred in.

Erasures should never be made to correct errors or omissions. The approved method is to draw a red line through any error that may have occurred and to insert the correction directly over the word or phrase corrected, and in this way errors may be corrected, and the manner of accomplishing the same is explanatory of all resolutions authorizing such corrections.

In supplying omissions from minutes, unless the matter omitted is too voluminous, it should be inserted at, or near the point of omission in the record; but where a resolution or other complete transaction has been omitted, then it is advisable to make a separate entry thereof, either at the bottom of the page where the matter omitted should have been originally recorded, or in any convenient place in the Minute Book, taking care to make a note of such omission in red ink in the body of the minutes where the omission occurred, calling special attention to the omission and

where the matter omitted may readily be found subsequently in the Minute Book.

The Stock Ledger should show to whom the capital stock was issued, and how it has been paid, and by whom. This ledger can be made self-balancing by establishing a Controlling Account in the General Ledger, entitled "Stock Ledger Balances," and the balance of which will show the standing of the Stock Ledger without drawing off the individual accounts, the net balance of which should always be in agreement with that of the controlling account.

It is the custom in most corporations for the president, treasurer or some confidential employe to keep a Private Ledger, provided with a lock, in which are kept the accounts which it is desired shall not be accessible to the regular employes. These are usually Capital Stock, Profit and Loss, Loans and Investments, Dividends, Personal Drawing Accounts, Salaries, and any special Accounts of a Confidential Nature. A Controlling Account is then opened in the General Ledger entitled, "Private Ledger," to which the amount of the net debit or credit balance of these accounts is posted in one item at the close of each month. This provides the amount necessary to complete the General Trial Balance, and determine whether errors have been made in any of the other accounts, besides furnishing complete protection

against the forcing of balances. The keeping of such a book also furnishes the management with accurate information as to the actual condition and progress of the business and withholds the same from those not entitled to the same.

In some companies, the controlling account in the General Ledger is dispensed with, the list of Balances drawn off by bookkeepers at close of the month being handed to a person keeping the Private Ledger, to which he then adds his Net Balance, and determines whether or not the general books are correct.

In keeping the Stock Certificate Book of a corporation, care should be taken to avoid real or apparent over-issue of stock. This may be accomplished by insisting upon a proper surrender and cancellation of all outstanding certificates at the time of a transfer, by observing and complying with the usual blank forms provided in every properly worded Stock Certificate Book, and by making proper entries of all payments and transfers of stock this important branch of a corporation's accounting may be easily handled.

**Examination
of Books and
Records.**

The investing public are now almost universally demanding an Independent Investigation and Report On the Con-

dition and Operative Results of a going business before seriously considering or taking any favorably important action thereon.

Particularly is this so where financiers are directly or indirectly concerned.

The cautious business man also demands such information, and the seller, or party desiring financial assistance, is usually ready and willing to furnish such a report where his business is prosperous, or even solvent, and present a reasonable business opportunity.

The great public, or *quasi* public corporations, publish annually a report of this character for the benefit of their stockholders.

The compilation and furnishing of this important information is often entrusted to audit companies, whose equipment for the preparation and supplying of such reports is a force of accountants.

But the varying conditions and vitally important questions which are necessarily met in the compilation of such information, brings the most important part of this service—viz., suggestions as to possible corrections and supplying in advance of such audit of important omissions in the corporate records and proceedings, etc., which will assist the client in accomplishing the results desired—outside and beyond the scope and qualifications of the accountant. All these features are so

closely allied to the work of the corporation lawyer, who should be experienced in the conduct of transactions of this character, that a combination of the two undertakings necessarily proves of great advantage to the client. Hence, many of the larger corporations are now examined under the supervision of legal counsel, particularly when any important changes or financing are contemplated.

In making an examination of corporate books and records, the Minute Book should invariably furnish evidence of the authority for all large transactions outside the *regular course of business*; and recourse is necessarily had to this book as a basis for an intelligent examination of the corporation's transactions. Besides, it is frequently advisable and necessary to determine whether the corporation is exceeding its authority and transacting business outside the scope of its Charter, and reference for this purpose is necessarily had to the Charter or Certificate of Incorporation itself.

Important contracts may necessarily have to be *construed* in order to ascertain their real import. Then, there may be other legal objections to the manner of issuing and payment of stock which would suggest themselves only to one versed in the law, and which, if discovered, might change the entire aspect of affairs. Therefore, a proper

investigation of all these matters should invariably be made in advance of the Audit, particularly whenever it is desirable to have an Earnings Statement to interest outside capital, or for reorganization purposes.

The orderly course of an independent examination of corporate books and records is to first examine the Articles or Certificate of Incorporation. This will show the date of organization, the purposes for which the company was organized, the amount of authorized capital stock, and who is liable for its payment.

The Minutes of the Stockholders and Directors' Meetings should then be taken up. These records will show the manner of incorporating, the consideration for which stock has been issued, how the original assets were acquired, authority for all extraordinary expenditures, the remuneration of officers, the amount of, and authority for, all dividends paid, and the warrant for the making of important and unusual contracts that may be entered into outside the general course of business.

The Stock Certificate Book and Transfer Journal are then examined and checked against the Stock Ledger to determine the amount of the capital stock outstanding, and the owners thereof, as well as to guard against any over-issue of stock.

The Trial Balances of the initial and terminating dates of the Audit contemplated are next examined and verified with the Books of Account. When the Balance Sheets of either or both dates are given they should be carefully examined, particular attention being given to the closing entries.

In all examinations, the verification of the Cash Accounts is of controlling importance. While the investigation may not be conducted with the special object of detecting fraud or shortages, all necessary precautions are to be taken to guard against the possibility of such irregularities being passed over.

The count of Cash on Hand is taken at the inception of the Audit, and a detailed list made of all Cash, Cash Tickets, Vouchers and Checks, Money Orders, etc., on hand. A Certified Statement from the Bank should then be obtained. After this is done, the Bank Statement and Canceled Checks are examined, and reconciliation made with the Bank Balance as shown by the company's Cash Book.

In cases where the date of the examination is subsequent to the closing date of the audit, all entries, footings, and bank deposits must be verified for the intervening period. The cash items are then worked back by the adding to the balance the disbursements, and deducting the receipts,

which should give the correct balance as at closing date of audit.

The footings of the Cash Book, general and subsidiary, for the entire period are checked. The disbursements are verified by the Vouchers supporting payments both as to payees and amounts. On the receipts side, the cash sales are checked from the records, and all discounts and allowances verified. The remittances are checked against the Ledger accounts, and the total receipts of each day against the bank deposits.

The footing of all books of original entry must be checked, and postings to General Ledger verified.

If the General Ledger contains controlling accounts with subsidiary ledgers, these must be in perfect agreement. Where differences are found to exist they must be located and corrected. If no controlling accounts are kept, they must be constructed, and the balances of subsidiary ledgers verified in the aggregate.

All cash items and column footings must be checked from General Ledger into Cash Book and afterward reviewed to see that all this class of items are cleared on the receipt side of the Cash Book.

The postings from all other books of original entry are checked into the General Ledger. Foot-

ings of all accounts in the General Ledger, open and closed, must be checked for the entire period and balances verified.

Sales Books are footed and charges verified by comparison with Original Orders and Shipping Receipts. Returns and Allowances are compared with Customers' Correspondence, Entries in Return Goods Journal and Stock-Keeper's Records.

Journal entries are verified by supporting Vouchers, which must all show proper signatures of approval and authorization.

Voucher Record is verified by comparison with Original Invoices. All Unpaid Vouchers are listed, the balance showing the amount outstanding, which should be in agreement with Accounts Payable in General Ledger.

Pay Rolls must be verified as to extensions and footings, and be signed by some person in authority.

Analyses are made of Profits and Loss and such Capital and Expense accounts as may be deemed necessary to show the results of operations of business. Adjusting Journal entries are made for such errors and omissions as have been developed in the course of the examination.

In the verification and valuation of Assets and Liabilities, the Title Deeds to all real estate should be examined and compared with book value of

property, as well as verification with amount actually paid. Proper charge for any depreciation should be made.

The Plant and Machinery Account should be verified by actual examination and comparison with Original Invoices (or appraisal). Care should be taken to see that no items which should properly be classed as Repairs and Maintenance are charged to Additions and Betterments for here is often found the basis of inflated valuations in assets.

Depreciation may be charged off at close of each fiscal period, the percentage being such as to finally reduce the cost of the plant to its residual value at the date when it is estimated it will have to be replaced. Or, another method is, to provide for the depreciation of a plant by crediting out of the net profits for the year—a certain fixed percentage of the cost of the plant and machinery to an account called “Reserve for Depreciation.” This maintains, at all times, a charge on the Ledger equal to the actual cost, and is believed by many to be a better plan than charging, each year an arbitrary amount on account of depreciation. It would be possible to ascertain the exact cost of the plant (by the first method) by going back over the books for the period and ascertaining how much had been charged each year; but by keeping this account in the manner

last suggested, the actual cost is known and the depreciation is provided for.

Patents, Franchises, Leaseholds, etc., are subject to such annual depreciation; and the conservative plan is to charge off a sufficient amount each year, so as to extinguish their value at the time of expiration of such rights. However, in the case of patents this is often an unjust and erroneous method, for patents often have an increasing value with their age and are not wholly valueless when the rights expire; so each case must receive individual treatment according to the facts.

Inventories should be signed by the parties taking them, and verified by the accountant as to extensions and footings. Prices should be cost or market, whichever lowest. Goods on Consignment must be stated separately. All Bonds, Stocks and other securities must be verified by actual examination and ordinarily valued at cost or market, whichever is lowest.

Accounts Receivable must be examined and Delinquent Accounts listed. A reserve for all delinquents must be created in the Liabilities, and set up on the Balance Sheet, or carried in suspense according to the particular circumstances.

Notes Receivable On Hand are checked with Note Register and verified by actual examination. Notes Discounted, but not matured, are verified by Certificate with Itemized List from Bank, for

which a Contingent Liability is set up on Balance Sheet.

Notes Payable are checked against Note Register, and if deemed necessary, verified by communication with holders. Notes Paid are verified by examination of Cancelled Notes. Notes Payable, unmatured, on which the company are indorsers, must be set up as a Contingent Liability.

Reserves for discounts and all unexpired charges and unmatured obligations must be provided.

Adjusting Journal entries must be made to set back in surplus such bad debts or other charges as properly belong to periods previous to the one under review.

The following is a list of exhibits and schedules which should be prepared in order to furnish a comprehensive report to stockholders or as a basis for the investigation of prospective investors:

EXHIBITS.

“A” Comparative General Balance Sheet, showing Assets and Liabilities with Increase or Decrease for period.

“B” Comparative statement of Income, and Profit and Loss Accounts, showing percentage of various expenses to net sales.

SCHEDULES.

No. 1. Reconciliation of Bank and Cash Book Balances.

No. 2. Accounts Receivable—City Customers.

No. 3. Accounts Receivable—Country Customers.

No. 4. Accounts Receivable—Sundry.

No. 5. Accounts Receivable in Suspense.

No. 6. Bills Receivable.

No. 7. Accounts Payable—Purchase Ledger.

No. 8. Accounts Payable—Sundry.

No. 9. Bills Payable.

No. 10. Comparative Monthly and Yearly sales, with percentage of Increase or Decrease.

No. 11. Comparative Statement by months, of General Expenses for Period.

No. 12. Stockholders of Record.

Further detailed statements may be furnished to accomplish the purpose desired, at the same time certain schedules referred to may be omitted within the limits of a complete audit.

One of the important prerogatives of a stockholder in a corporation is his right to examine the books and records of the corporation in which he is a stockholder, and this he may do by himself, or counsel, at any and all reasonable times and for all legitimate purposes.

To enable him to avail himself of this privilege,

the law will compel the officers of a corporation to permit such examination and award damages for its denial.

The extent to which this examination may go is limited by the circumstances of the particular case, the laws of the State where the corporation is created, and often depending upon the nature and extent of the business, as well as its condition.

REORGANIZATION AND CONSOLIDA- TION OF ENTERPRISES

FRANK'S "SCIENCE OF ORGANIZATION," ETC.

CHAPTER IV.

REORGANIZATION AND CONSOLIDATION OF ENTERPRISES.

Reorganization — Possible Ad-	Consolidation of Enterprises.
vantages Therefrom.	Stock-Jobbing.

Reorganization — Possible Advantages Therefrom. The title selected for this important subject pre-supposes the existence of two necessary conditions; *First*, that the business has been organized, either as a corporation or otherwise; and, *second*, that for some reason it is deemed necessary or advisable to change its status—that is, the manner of doing business, if not its very foundation and conditions. The manifold advantages of a corporate existence, as compared with the unincorporated, and the mode of accomplishing this object have already been discussed; and the opportunity to illustrate one of the chief advantages to be derived from the corporate idea, as compared with the unincorporated existence, is here presented.

Under a preceding head many of the common causes for reorganization have been given, and in discussing the various practical questions arising

in the course of the organization and conduct of business corporations, the advantages and methods of accomplishing this result have necessarily been suggested. At the same time a separate discussion of the subject of reorganization and its possible advantages to the established business, as well as to its owners, is necessary in order that many of the principles and advantages discussed may be illustrated and applied.

A business venture which has failed to attain success may often be reorganized in such a way as to give it the vitality it requires, and the lack of which has been the cause of its failure. For instance, a business which has struggled along under a faulty organization in the first instance, may be the subject of successful reorganization. This faulty organization may be due to a multitude of causes, such as a failure to provide sufficient capital, or a practical way to acquire it; unfavorable location, either of the business itself, or an unfavorable State for the creation of the corporation; or some legal defect in the incorporation itself.

In any and all of these cases the opportunity for success and rehabilitation is limited only by the circumstances of the particular case, and the skill, understanding and effort of the reorganizer.

It is only where the business itself is a commercial disaster, or impossible of practical ex-

plotation, that failure is certain; and when this fact is ascertainable or patent from an honest and scientific examination, it is then, of course, wise to abandon the undertaking altogether.

The class of existing and going concerns which are a subject of reorganization, and where the greatest benefit and profit may be derived therefrom, are: *First*, the established concerns which are making abnormal returns on the capital employed; *second*, where it is the desire of those interested in the permanency and continued success of the business to show their appreciation of the services of certain employes, such as department heads, and to afford them recognition in the business itself.

What is meant by "abnormal returns from the capital employed" is the accumulation of net profits annually beyond the recognized earning power of money; that is, what would be a fair rate of interest if the amount employed in the business was invested, and *similar security* was given for the repayment of the principal and interest. If the profits of a business in reality average in excess of this amount, some action should be taken, either to reorganize the business so as to increase the stock holdings of the owners of the business, or if the business conditions will permit, increase the capital stock and thereby arrange to bring the earning capacity

and the relative holdings of the members into harmony.

It is the universal experience of all that the sale of unlisted stocks can hardly be made above par; and if the stock has an earning power greater than the legal rate of interest it is in reality worth above par.

The second class has to do with the questions of value and also that of management. Many going concerns have been placed in the hands of department managers by allowing them to have a great or small stock interest; and this has been found very satisfactory to all concerned, in the majority of cases.

By properly re-valuing the business that has been established, this object can be accomplished with comparatively little, if any, financial sacrifice by the owners. For, invariably, the ordinary employe will exert a greater amount of effort, and manifest a different kind and degree of interest in a business in which he has a financial interest; and in consequence, the business will produce greater results, and the earning capacity and value of the stock will be proportionately increased.

The following case will show many of the advantages, as well as the errors, that may occur in the reorganization of a business, and at the same time serve as an illustration of many of the principles announced.

A and B were the originators of a manufacturing business which they had established and located in a suburban town. The business grew from a mere shop until it became an important factor in their line of trade. Finally they decided to "incorporate the business" and to that end formed a corporation—The A & B Company—and capitalized it for \$200,000. Upon taking the inventory of the assets (the first ever made) it was found that a conservative estimate of the value, which included the factory site of ten acres of valuable land, was in the neighborhood of \$180,000; besides, the bills and accounts receivable and cash on hand amounted to about \$100,000 additional. Inasmuch as A, B and C (B's son-in-law) would own all of the stock of the corporation to be formed, they considered it immaterial that the value placed upon the assets so greatly exceeded the capitalization, and transferred the property to the new corporation in exchange for its capital stock.

In about three years A died and it became necessary in the administration of his estate to sell his stock in the A & B Company. The corporate books showed an average net earning for the three years of about 9% on the capitalization and tangible assets aggregating about \$290,000. But notwithstanding this favorable showing, it required diligent effort under the circumstances to find a

purchaser for all of A's stock at par. D, a banker, was the purchaser, and he bought A's stock as an investment.

The entire capital stock of the A & B Company was now owned by B, C, and D, the banker. B was getting along in years and desired to retire from active business life. C was an "office man" and not familiar with the manufacturing details of the business, and as before stated, D was otherwise engaged and had no experience in or desire to become actively identified with the manufacturing end. Finally it was decided to give three of the old employes an opportunity to become financially interested in the business and to make them officers of the corporation as well.

Upon due consideration it was not found advisable to reorganize the corporation and adjust the values and property rights of those already interested in order that the new members might be admitted and place the business in a permanent and practical form for future operations.

The new corporation was capitalized at \$350,000, and the plant, tangible assets and good will of the A & B Company were transferred to it in exchange for \$315,000 of its stock. The three employes named were then sold outright \$2,000 each of the new stock at par and given a contract whereby they would receive an increase in salary amounting to \$8,000 each, to be accumulated inside of a

given period should they remain in the company's employ during that time, and to have stock issued to them annually in lieu of money for such yearly increase.

The former factory site was then sold for \$40,000 cash and a new location with twenty-five acres of land was obtained as a bonus from a town (more favorably located) where such a manufacturing industry was desired. The plant was modernized and enlarged with the proceeds of the sale of the former factory site and the business was then reorganized upon a more modern practical basis.

As a result of this reorganization, B had \$140,000 of stock in the new corporation; C \$25,000; D \$150,000, and the three employes had \$2,000 each issued to them. This left \$29,000 of unissued stock in the treasury, \$24,000 of which would be transferred to the employes named as an increase of salary and to create a personal interest among those charged with the actual operation of the plant.

At the expiration of some two years the entire stock of this new corporation was purchased by a syndicate of capitalists for the purpose of turning it over to a "trust" in that line at 25% above the par value. The inventory that was then made and the earning statement for the period showed that the net profits of the business were about

11¼% on the *increased* capitalization, as against 9% on the old, and this with the same business and practically the same management.

Another illustration presenting a different phase of the question involved is where two separate and competing corporations (which for convenience will be designated as A Company and B Company) decided to join forces and interests under one head. To accomplish this purpose A Company changed its name to include that of the B Company and increased its capital stock so as to permit the purchasing of the business of B Company with such increased stock. The various stock and financial complications and entanglements of both corporations were of such a nature that the new consolidation, when accomplished, presented an object lesson of many of the most troublesome conditions to be met with in corporate affairs.

The working capital proved to be insufficient and the increased stock remaining in the treasury was offered for sale. Many prospective purchasers were found, but upon investigation into the complicated conditions of the company's organization and affairs they all declined to purchase the stock in the treasury. Finally (and as a last resort), the stock was offered to the customers and employes of the surviving corporation and much of it was sold on "easy payments" or on

installments, with the result that after struggling along for less than a year a complete reorganization was found necessary and undertaken.

The conditions that confronted the reorganizers may be included in the following general statements, viz.: faulty organization of A Company and inflated valuation of assets, both at the inception of the two undertakings and at the time of taking over B Company's property by A Company; stock hypothecated as collateral for individual loans of stockholders; dividends had been declared which impaired the capital; the corporate records had not been properly kept and the by-laws had never been adjusted to meet conditions existing after the consolidation; much of the increased stock had not been paid for and no means could be found of enforcing such payments; the stock of the company was scattered to the "four winds" and much of it could not be obtained for reorganization purposes; a large list of creditors were insisting upon payment of their claims; a "blanket mortgage" had been given the bank to secure it for current financial accommodations, etc. In consequence, failure was inevitable, and what in reality was a profitable and promising industry became a fit subject for a court of bankruptcy, where the same was sold in bulk, and thereafter became successfully reorganized by eliminating practically all of the stock-

holders of both A and B Companies, which meant a total loss to them.

Innumerable examples could be given similar in result if not in conditions to those here referred to, but due consideration for the size of this volume will not permit further illustration. Besides, the important underlying general principles are all that can be given or illustrated in a science which (as here) has to deal with all the varied circumstances and conditions of business life.

C o n s o l i - In our modern system of promot-
d a t i o n o f E n - ing and business-financing, little
t e r p r i s e s . attention is given to the question of consolidation of corporations *as such*. Nearly all of the States have enabling statutes providing for the consolidation of corporations of the same kind and engaged in the same general business—carried on in the same vicinity. It is usual to limit such consolidations as here stated, and also to further restrict them in the number of companies that may avail themselves of such privileges. This has been done to prevent the formation and creation of “trusts and combines,” in restraint of trade.

These safeguards and restrictions have simply suggested a more practical and advantageous method of accomplishing the same or similar re-

sult, namely, to organize a new and independent corporation, and to then purchase outright such rival industries as may be desired; and in many instances, stocks and bonds of the new corporation, or the proceeds of their sale, have been used in payment for those rival plants.

Then, again, it is not unusual for one rival corporation to increase its capital stock, and to then purchase outright the plant of a rival, and to issue in payment therefor, the stock of the purchasing company, or to use the proceeds of its sale for that purpose.

These plans, and others similar, have almost entirely superseded the actual consolidation of corporations under statutory authority and restrictions; and any extended reference to the plan would but involve a discussion of the litigation which has resulted from its adoption.

Railroad companies are an exception in the use of the actual consolidation method, for the reason that, where there is no competition, liberal laws are uniformly enacted for this purpose, and this on account of their public character and supposed benefit to the public; and the tendency in this regard is to further encourage them to consolidate.

Notwithstanding the public sentiment which unquestionably still exists against consolidation (or reorganization for this purpose), the legitimate advantages that are derived therefrom are now

apparent to those who are at all familiar with such matters, and it deserves consideration from an economic point of view, as well as from a sentimental or personal standpoint.

It has been aptly said that an ideal social condition would be that in which, in every department of industry, there should be one great corporation working with its possible economies and compelled to give to the public the full benefit of those economies, and to accept in return a reasonable rate of interest upon the actual capital employed.

While it will be universally conceded that such a condition does not yet exist, it must, however, be admitted that the public, employer, and employe have almost universally derived substantial advantages from the majority of consolidations which have heretofore taken place. And it may safely be expected that, with a more intimate acquaintance and understanding of these questions by the public, and a reasonable State or National control over great industrial combinations, a practical solution of the "trust abuses" will be at hand; i. e., welcome centralization, but repress total monopoly—extortion.

It is doubtful when and where the advantage of monopoly in business was first discovered; certainly few successful enterprises have been found where the element is, or has ever been wholly absent. It will be found to exist in some form

or other, either in the shape of patents, trademarks, trade names, or peculiar characteristics and features adopted by the manufacturer of an article of trade which distinguishes it from all others of a similar nature. These and other species of monopoly are, and have been, the common objects of all successful enterprises.

One might as well undertake to compete with a rival up-to-date manufacturing concern without the aid of any of the modern machinery or facilities commonly employed as to wholly disregard the advantages that may be derived from a reasonable centralization of effort and capital.

The statutes of the State must be strictly followed in effecting a consolidation of corporations; and in case the plan of reorganization or re-incorporating is adopted, what has been said in relation to the subject elsewhere will apply as well here, and therefore need not be repeated.

There is always present the important questions of *plans of procedure*, etc., which have been referred to throughout, and they should engage the particular attention of an experienced corporation lawyer.

It is frequently important that a corporation should be legally and formally dissolved upon the sale of all its assets to a rival corporation, or to one formed for the purpose of consolidation.

A corporation can only be dissolved by expira-

tion of a time limit for corporate existence granted in the charter (and in some States several years thereafter); by decree of a court of competent jurisdiction; by voluntary act of the corporation itself in accordance with forms prescribed by the laws of the State of its creation, and where the charter is granted directly by the Legislature of a State, it may be repealed and annulled by such Legislature.

It is sometimes prescribed by statute (as in Illinois) that the failure to file certain reports with the Secretary of State will work a forfeiture of the charter, or that the Secretary of State may arbitrarily cancel such charter upon the failure of such corporation to comply with the acts in question, but this is of doubtful legality, unless in accordance with the Constitution and express wording and reservation of such power in the statutes creating the corporation.

Unless some one of the above general conditions has been complied with, the corporation lives on, regardless of all other questions, and the subscribers to the capital stock, or stockholders, may be called upon at any time for any latent and unintended liability that may exist or arise.

The statutes of the various States prescribe the mode for voluntary dissolution of corporations and these must be strictly followed. They usually require the consent of the stockholders, or a large

majority of them (usually two-thirds), to such dissolution, and that the question shall be voted upon formally by such stockholders at a meeting regularly and formally called in accordance with such statutes.

Stock Jobbing. The most conspicuous abuse of the corporate plan of conducting enterprises is the creation of trusts and monopolies for the purpose of extortion and enforced subjugation. Immediately following this modern crime against society, is the more subtle and illusory perversion of the opportunities conferred, viz., "stock-jobbing."

The motives that prompt the commission of the offense first above referred to might be properly denominated greed and a reckless disregard for the rights and welfare of others; while the impulse that suggests and contributes to the achievement of the latter is obviously dishonesty.

What may and may not constitute stock-jobbing is a relative question, but the meaning of the term as here alluded to is the issuing of stock for fictitious or grossly inflated values, and the creation of corporations for ulterior purposes, such as the collection of funds from the sale of stock for the ostensible purpose of promoting an enterprise,

while in fact the money thus acquired is to be used for the personal benefit of the organizers themselves.

Another and less flagrant class of transactions which fall within the definition of the term here considered are those enterprises which are capitalized for an exorbitant and unreasonable amount for various reasons, among them being the desire to offer the stock of such a company at a discount for the purpose of inducing the inexperienced to buy it, and to gratify the visionary individual who may be behind the enterprise.

In order to illustrate the possibilities and effects of issuing stock upon fictitious and inflated values of property transferred to the corporation at the time of its creation, one has only to investigate the inside history of many (if not a large majority) of our large industrial enterprises formed within the past few years, and, in fact, many of our railroads are reported to be capitalized "in the air," so to speak. In 1905 the capital stock of all the railroads of the United States amounted to \$6,741,956,825, and the total liabilities, except current accounts and sinking funds, amounted to \$14,765,178,704.* Should these figures be applied to an individual or single business enterprise the conditions would not be re-

* Figures taken from Report for 1905, U. S. Bureau of Statistics.

garded with favor by financiers, for while the cost or value of properties are not available (except an estimate of some \$12,000,000,000), it is assumed that the total amount of capitalization reflects a liberal valuation on the tangible assets at least of these properties, and if this is a correct premise, then the chief assets are the franchises and intangible rights which depend upon continued operation for their value. In brief, the railroads are financed upon their probable earning capacity, rather than upon substance, and while this might reasonably be regarded as legitimate and proper financing in this class of enterprises, if the same principles were applied to individual industries, they would be regarded as stock-jobbing.

In the recent combinations of industrial enterprises many instances may be found where the capital stock represents a generous valuation of the properties consolidated, while the bonded indebtedness of these concerns is equal to, and in many cases greater than, the capitalization; hence if both bonds and stocks have been sold and are outstanding and being held by investors, this form of property represents a large percentage of our present floating securities.*

* The foregoing having been recorded in 1907, subsequent events and disclosures seem to justify the conclusions announced, which were at that time the subject of adverse criticism.

The foregoing is but illustrative of the abuses of the corporate system perpetrated in the higher realm of financiering for the purpose of drawing capital; and the ethical responsibility for the ultimate repayment of the money thus secured rests upon those who have inaugurated the plans adopted, as well as upon those who have knowingly assisted in carrying such plans into effect.

Where financial assistance is sought in everyday business affairs it is the exception rather than the rule that enterprises are able to acquire such assistance except upon establishing their financial merit, and this must be based upon material wealth. The experienced financier would not regard with favor the application of an enterprise that was involved in a bond issue to the extent of its responsibility, when viewed from the material standpoint. In other words, the principles adopted by "high financiers," who are responsible for floating the securities which have been issued by railroads and industrial enterprises within the past few years, would not be the basis upon which financial assistance could regularly be obtained. While a more liberal rule necessarily obtains in the capitalization of enterprises than that adopted by banks and financiers generally in extending commercial credit, still the basis for a sane valuation is in principle the same.

It is not the purpose here to condemn or de-

fend the transactions which now constitute, in a measure at least, the material for a general history of modern American finance, but to illustrate what appears to be erroneous and prejudicial theories for the financial foundation of a business enterprise.

We must assume that the vast majority of the business of the future will be transacted by and through the corporate system, and it would seem that in the light of recent events no greater service could be rendered to those who are engaged in the "game of business," than to impress them with the responsibilities and ultimate consequences of their methods. While it is conceded that the moralists are the individuals most concerned with discourses on ethics and moral sentiment, still no vocation can wholly disregard questions that involve its reputation as a respectable and honorable occupation.

Business is now the principal occupation of society; it furnishes the means of livelihood, and financial as well as social advancement, for a great majority of mankind. In the process of evolution, which business is now and necessarily must continue passing through, it is imperative that those who are concerned about its future should take heed of certain inevitable consequences of what is recognized to be a violation of the law of natural right. The Socialist now sees

the end of "class privileges and individualism" in the wake of our present commercialism; while the individualist hopes and believes that only the ethical improvement of mankind will work out the destiny of this modern dominant force.

Social scientists tell us that the corporation is fostering, if not responsible for our oppressive trusts and monopolies; that without this institution we would have free competition with its attending benefits. On the other hand, these same scientists admit that competition promotes "commercial cannibalism"; therefore, it may be seen that any attack upon a system of accomplishing a given end cannot be effective, and that after all, the *motives of the individuals* rather than the system under which they operate are essentially of controlling importance.

It is folly to lay the blame of unjust or oppressive conduct upon corporations; while they are, according to the predominant "fiction theory", a legal entity they are without moral or mental qualities—conscience, feeling or moral responsibility—and should not be chargeable with the acts, conduct or motives of their stockholders, directors or officers who control their policies and their every act; and no system of laws for the national or state control of corporations will make the *individuals* composing them, fair, equitable or just.

The subject of over-capitalization has already been discussed; in the succeeding chapter further illustrations are given of this and other abuses of corporate privileges which are so intimately connected with the subject in hand.

PROMOTION OF ENTERPRISES

FRANK'S "SCIENCE OF ORGANIZATION," ETC.

CHAPTER V.

PROMOTION OF ENTERPRISES.

Promoters.	Patents and Their Commercial
Promotion Contracts.	Value.
Good Will — Trademarks and	Mining Enterprises.
Trade Names.	

Promoters. According to Webster, a promoter is "One who sets on foot and takes the preliminary steps in a scheme for the organization of a corporation, a joint stock company, or the like." Assuming this definition to be correct, there are few men who have not, at some time or other, acted the part of a promoter. At the same time, there are many persons who would resent being called a promoter, even of a single undertaking.

This prejudice is due primarily to the fact that the nature and opportunities of the business have attracted so many visionary, irresponsible and (we believe we are justified in adding) dishonest persons. In fact, the confidence man is not a stranger to this field of activity.

But it is as unjust and unwise to condemn promoters as a class, because frequently a "Colonel

Sellers'' or a ''confidence man'' has been found among them, as it would be to condemn our National currency on account of the discovery of an occasional counterfeit. In both cases the spurious is more frequently discovered among the smaller ''denominations,'' and the reason is apparent.

Promoting, as a profession, was begun in London. A prominent publication contained the following interview with one of the first of this profession to attract attention in the field of consolidating industrial enterprises:

''Months and months of the hardest kind of work is necessary to float these great concerns. People are incredulous, and it is hard to win them over. Some want more than the actual value of the property sought. It takes more than ordinary persuasion to convince holders of property, stocks or bonds that it is best for them to sell, or become a party to a project, whatever it may be.

''I take hold of nothing until I am convinced that success is certain. I then interest the *practical* men of the different concerns to be consolidated; these practical men agree with me to take three-fourths of the stock. Next, I interest capitalists in the remaining one-quarter of the stock. Only those who are best adapted are put at the head of the institution as officers and directors. That insures the strictest economy and highest

efficiency in the management of affairs. Then, after the company has been floated, I keep a sharp watch over operations.

“I have turned down dozens of offers for my services in promoting new companies.”

It was an English promoter who conceived, or rather demonstrated, the plan of consolidating a number of properties in a certain line of manufacture, without the necessity of money entering into the transaction—at any rate, to any considerable extent. As the plan has been adopted in this country in so many important instances, it is deemed worthy of attention.

The following is a quotation from an article appearing in a leading commercial magazine, published upon the first “exposure” of the plan:

“A & Company were manufacturers of shoes, and their business showed a net earning capacity of 10% on the estimated value of their plant, to-wit: \$1,000,000; B & Company, also shoe manufacturers, showed a net earning capacity of 7% on the value of their plant, to-wit: \$600,000; C & Company, also shoe manufacturers, showed a net earning capacity of 8% on the value of their plant, namely, \$400,000.

“D, the promoter, succeeded in interesting these three companies in the plan of consolidation, and upon its consummation, the properties were all turned in at the valuations named, making a total

of \$2,000,000, with the average earning capacity of 8.7% on the valuation named.

“A bond issue was created on these properties of \$2,000,000, and the capital stock of the corporation taking over the properties was placed at a like sum, namely \$2,000,000.

“One-half of this capital stock was made preferred stock, 6% cumulative, and this issue and the bonds mentioned were all turned over to the various corporations, pro rata, in full payment for the plants, and the parties originally owning the plants were made officers and directors of the new corporation. This left the promoter with \$1,000,000 of the common stock of this combined aggregation for his profit, and which, it is unnecessary to say, was promptly sold to the unsuspecting public.”

Another example, and one nearer home, further illustrates the resourcefulness of human ingenuity: A, being a large dealer in coal, discovers a series of mines along and dependent upon a certain railroad for shipping facilities. He conceives the idea of consolidating, or rather buying up all of these mines and making them the basis of a large corporation, which would then be in a position to control the output of these properties. His first step was to get an option on all these industries at a price as near their reasonable value as it was possible to do. In addition to

this, he acquired options on most of the available land in that vicinity that was supposed to contain coal, or could be utilized for the purposes he had in view.

After he had acquired these options, he approached the officials of the railroad company referred to, and undertook to interest them in the project—making clear the point that the revenue from the traffic of these mines would in a very short time pay for the properties—and incidentally, that the same traffic would support, if not materially assist, in the construction of a competing railroad that would connect with another large system and thereby deprive them of this profitable traffic. While the railroad company in question did not, itself, take an interest in this project, it was by or through the assistance of the officers of this road that the deal was consummated and the options taken up, and working capital provided, with money raised by a bond issue upon the properties themselves. As a result of this transaction, \$1,000,000 in first mortgage bonds were floated, and \$3,000,000 of common stock was issued, largely for the *intangible assets* of this corporation, namely, the options themselves, which cost A in the neighborhood of \$3,000 initial investment.

Still another example illustrates the more daring and troublesome class:

A, B & C organize a railroad corporation for the ostensible purpose of constructing a line of road to a distant city. They have an elaborate prospectus prepared, showing the proposed right of way and trains in operation. As a temptation to the investors, they show the enormous gross earnings of some "competing line" and others that are National prides, and then offer the stock of this phantom road at a *ridiculously* low figure "*for a limited time only;*" and, as a still further generous concession, they propose to permit small investors to acquire a block of this stock on easy payments.

Expensive and sensational advertisements are inserted in the daily press, and every modern and effective method of reaching the wage-earner and other small investors is adopted; with the result that enough money is collected from the inception to continue the campaign of exploitation and promotion.

Now the real purpose of the scheme is put into action, namely, the payment of salaries to A, B & C, and this is continued until the enthusiasm of the available investors is exhausted.

There is necessarily a certain amount of actual development work done to aid the scheme and to bolster up a plausible defense in case of interference upon the ground of fraud, but the "Railroad" is ever in contemplation until the contribu-

tions cease, and then the salvage of the financial wreck is passed along into the hands of a receiver for distribution.

These examples are given for the purpose of illustrating the possibilities for great financial gain which have attracted the speculator and unscrupulous alike to this profession.

**Promotion
Contracts.**

Contrary to the prevailing notion, the contracts of promoters are not necessarily confined to the inception of a business or the organization of a corporation. They may, and usually do, extend into the initial operation of the enterprise, at least to the extent of raising the necessary capital and "putting on foot" the project in hand, after the corporation is formed; and for this reason, their acts and responsibilities may cover a large range of conduct.

Probably the questions causing the most controversy and litigation in this relation arise in connection with the promoter's compensation or profit; that is, how he can lawfully acquire compensation for his services, when his employment is to "set on foot and take the preliminary steps," in the organization or reorganization of a business project.

His compensation is often contingent upon the accomplishing of a certain end, and the difficulty usually encountered is to ascertain for whom he may act, and to whom he can look for his compensation.

Assuming that the business with which he is employed is to be conducted by a corporation *to be formed*, manifestly he cannot bind the corporation until it is in existence, and even then there is some difficulty encountered where the services were rendered prior to the creation of the corporation in question.

Some States have statutes providing for the payment of capital stock of corporations organized therein—in services. They are South Dakota, North Dakota, Idaho, Colorado, West Virginia, Delaware, Maine, and a number of other States whose laws are otherwise deemed unfavorable to the principles announced.

What constitutes “services” is often a subject of inquiry. It has been held that a gift of stock to a promoter is illegal, and that the issuance of stock to “influential persons” for the use of their names, is equally so. But the issuance of stock by corporations created by any of the above named States for *bona fide* services actually performed, and for which the corporation either contracts, or accepts the benefit of by proper resolution, is legal.

When the promoter is acting for parties in interest in an established business, where it is desired to reorganize or enlarge the same, the safe and proper method is to contract with the parties to be benefited by such services, for a percentage of the stock which they receive in payment for their interest in the enterprise. Then, upon the transfer of the business in question to the corporation when formed, the agreed percentage of the stock issued to the parties in interest for their share in the business enterprise, can be assigned to the promoter, and in that way obviate every question and fulfill every requirement.

The relation of the promoter to the corporation is usually *fiduciary*, and in consequence, his acts and duties in dealing therewith are governed by the rules of law pertaining to that relation generally.

For a general consideration of the subject in hand the rights and obligations of the parties will be classified as follows: The duties and responsibilities of the promoter (a) to his client; (b) to the subscribers of stock; (c) to the corporation promoted, and (d) to the stockholders after organization; then, the reciprocal duties and obligations of (e) the client and (f) the corporation to the promoter.

The duties and liabilities of the promoter to the

client are generally based upon contract, either express or implied, depending upon the circumstances of the particular case.

Generally speaking, the promoter is held to a very high standard of conduct, as he usually occupies a relation of trust and confidence; and whenever the question of his loyalty is involved the burden is upon the promoter to establish the utmost good faith and fairness in all his dealings with the client.

He may not acquire any secret advantage over his client by reason of his employment; and he is in many respects charged with the same degree of responsibility as an attorney at law.

The promoter's duties and liabilities to the subscriber of stock of the corporation frequently arise through representations made by him either in the prospectus or otherwise, before incorporating. The rule is well established that he is personally liable for any misrepresentations, and for withholding important information which the circumstances of the particular case make it his duty to disclose.

It is not moral obligations that the promoter is liable for; but where it is *necessary* for him to disclose important facts to enable the subscriber of stock to determine whether or not he will become interested in the proposed corporation, failure to disclose will render the promoter liable

to such subscribers for any damages resulting from his silence. In other words, intentional withholding of information may be equivalent to misrepresentation.

The liability of a promoter to the corporation may, under appropriate circumstances, be governed by the same rules as those applicable to his relation to the client. If the promoter places himself in a position of trust to the corporation, he is charged with all the responsibilities of that relation generally.

This responsibility invariably attaches where he is looking to the corporation (when formed) for his compensation, and where he is to be reimbursed for his expenses by it; and it has been said that the test of his responsibility is: *Was he benefited by the incorporation?* In any event he is bound to exercise good faith, and if he afterward acts for the corporation in securing capital, either from the sale of its stock or otherwise, he thereby becomes its agent and will not be permitted to acquire any secret personal advantage through such employment.

The most common source of disagreement and consequent litigation is where the promoter is personally interested in the property conveyed to the corporation at the time of its formation. In such a case the promoter is obliged to see that the property conveyed is fairly valued as well as

fairly acquired by the corporation—that is, he must see to it that a disinterested Board of Directors pass upon the value of the property conveyed by him, and that it also is to the interest of the corporation to acquire such property.

This does not mean that the promoter may not make a profit on property sold to a corporation which he is forming, but it does mean that he may not make a secret profit therefrom. It is his duty to disclose to his corporation that he is profiting by the transaction, or in any event he must not conduct himself so as to lead the directors to believe that he is *not* so doing.

The promoter of a corporation who becomes an officer thereof on its formation is in consequence to be treated as its agent and trustee, and is accountable to the corporation for any secret profits which he may realize upon property bought for or sold to the corporation.

In order to charge one with the responsibilities above referred to, it is often a question as to who is or is not a promoter. To constitute one a promoter of a corporation it must be shown that he was acting for and on behalf of the corporation, or that he assumed so to act; and that on the strength of such authority or assumed agency, the party complaining dealt with him upon such understanding.

The duties of the promoter to the stockholders

of a corporation after it is incorporated are usually that of an agent. However, the promoter may be liable to all, or a part of the stockholders, for a separate accounting to them, where his course of dealing has placed him in the position of a partner at the inception of the undertakings; that is, where he has secured the co-operation of all or a certain number of the stockholders upon the representation that they were to share equally with him in the profits of the undertaking, in such a case he is liable, of course, as a partner; and the right of action is based more upon the right of a co-partner than that of a stockholder.

Where, however, the wrongs of the promoter are in the representations made alike to all, in relation to the corporation or its property or intentions, the right of action must necessarily be maintained by the corporation, and not by the stockholders.

The reciprocal duties and liabilities of the client to the promoter are usually regulated by contract, either express or implied, and those of the corporation to the promoter depend largely upon the circumstances. If he is acting directly for the corporation, its responsibilities to him are to reimburse him for his services, and, as before stated, if the corporation was not in existence at the time the services were performed, if it afterward adopts the acts of the promoter, or accepts the

benefits of his work, it is liable to him for the reasonable value thereof.

If the statutes of the State under which the corporation is organized provide for a subsequent payment by it of the costs and expenses of incorporating, then, of course, he may recover for such expenses incurred in bringing the company into existence.

Where a promoter acts for a corporation that is to be formed, his contracts are similar to those of an agent generally under similar circumstances; and if the principal (the proposed corporation) is never brought into existence, there is no remedy for those who have dealt with the promoter upon un-executed contracts made in that way; but it must clearly appear that the promoter is acting for a corporation to be formed, or he will be personally liable upon such contracts.

Of course, where money or property has been turned over to a trustee, or to the promoter, upon such contracts as are here referred to, a different rule applies, and the prospective stockholder may have appropriate relief in case the corporation is never formed.

Among the important promotion contracts are those relating to the subscription to capital stock, as well as bonds or other securities, made at or before the complete organization of the corpora-

tion, or the taking over of tangible property in exchange for its stock or bonds, and this subject is so intimately connected with that of underwriting and guaranteeing such issues that they will be considered here and in the inverse order named.

Underwriting stock or bonds means simply to subscribe for a certain portion or the entire issue, upon the agreement that payments shall be made at some future date or on installments, and at a price usually below par. Such contracts are necessarily made with banks and other financial institutions, syndicates or financiers of recognized ability and standing, who are not only able to dispose of such securities but to pay for them, even if they are not sold at the time specified in the underwriting agreement when such payments are to be made.

The advantages to the corporation from such a contract are many, the principal ones being the assurance of ready working capital at all events, the prestige of a well-known distributor of securities, the services of experienced financial agents, and a ready market.

The underwriter of such securities has also special facilities for ascertaining the responsibility of the institution issuing the securities offered, and the general investing public are aware of that fact and therefore more readily influenced

by the representations of such underwriters concerning the merit and value of the investment.

Many issues of such securities are underwritten by financial institutions without the investment of any considerable portion of the value of the securities underwritten, as they are usually sold to the general investor before the payments by the underwriter become due; and his profit is usually the difference between the price he contracts to pay for the entire issue and whatever may be realized from the sale to the investing public, and this varies according to the character of the investment, and the probability of their ready sale.

Guaranteeing stocks and bonds, as the term implies, insures the value and payment of the issue or portion thereof to the investor. Such an undertaking is usually to guarantee that stocks will not pay less than a certain specified dividend during a certain period, or that bonds will be paid in full at maturity. Analogous to this is what is termed the "trust-fund" plan, which is also designed for the protection of investors, or professedly so, but it is so little in actual legitimate use as not to merit discussion.

The organizers of the corporation are all considered in law as its promoters and their contracts as subscribers to the capital stock of the corporation *to be formed* for any lawful purpose

are binding, as being based upon the consideration of their mutual agreements to take such stock when the corporation is formed, and each subscriber will be liable to the other subscribers for his failure to carry out his subscription. In addition to his liability to the other subscribers, a further liability to the corporation itself, as well as to its creditors, accrues as soon as the charter or certificate of complete organization is issued by the State creating such corporation; in other words, as soon as the subscription is acted upon by such State.

As between the subscribers to the capital stock, a special agreement to accept property, at a fair valuation, in payment for such stock is also legal, and the valuation placed thereon by the subscribers or promoters will govern; such agreement will not bind the corporation unless acted upon and adopted by it.

Contracts for underwriting and guaranteeing the stocks or bonds of a corporation before it is formed, are not free from objection on account of the difficulty in the preparation of such contracts owing to the lack of a legal entity to contract with; it is usual to make such contracts with a trustee or party acting as such for and on behalf of the organizers of such proposed corporation or the parties who are to become interested therein.

To summarize, it may be said that promotion

contracts or contracts that have to do with promotion of an enterprise are so numerous as to involve the whole law of contracts, and that any extended discussion of that subject is beyond the purpose of this volume.

The reader is here referred to the various contracts and other illustrations given in the appendix hereto, all of which have been successfully used by the writer in the course of his professional connection with the promotion and financing of enterprises.

Good Will. In the preceding chapters we have
Trade - marks chiefly referred to *tangible* property
and Trade and its relation to the subjects of
Names. organization and reorganization of business enterprises. Under this, and the following head we will discuss *intangible* assets, a species of property of comparative recent origin, and which is largely the product of the business ability, devotion to principle and ingenuity of those creating it.

As has been heretofore stated, the good will—general reputation for reliability and ability to serve—is frequently of greater value than the tangible assets belonging to an enterprise, and the law now recognizes it as a very respectable species of property. At the same time it is not permissible to arbitrarily value the good will of a

business so as to create a fictitious asset, as is so frequently done.

The subject of Trademarks and Trade Names is so intimately connected with that of Good Will that it is deemed necessary, for a practical understanding of their importance and use, to consider them together. In fact they are inseparable when considered in the light and for the purpose here intended.

Trademarks are arbitrary symbols, devices or distinguishing marks applied to a given article of manufacture which are destined to appeal to the eye and serve as a means of ready and certain identification from all other products of a similar nature; while the use of the Trade Name is to show the source from which the particular article came. Therefore the Trade Name, appealing as it does to the ear, is so intimately connected with the Good Will of the Manufacturer as to be its means of identification.

The reputation and standing of a business is identified and protected only by and through its name and arbitrary marks for identification of its product, and the possession of either or both may enable a stranger to the particular enterprise to begin where another leaves off, and thereby profit by his past efforts. And here we find proof positive of the established ethical doctrine, viz.: that honesty and fair dealing are indispensable to

permanent success in business, for the most valuable and thoroughly established Good Will may perish when and as soon as the public discover any deterioration or lack of the qualities which have created it in the first instance.

The creation of the species of property under consideration, viz. : good will and trade names, as well as trademarks, are the result of the labor, skill and investments of the possessor, and their protection and utilization as property universally receive adequate protection.

The life of a trademark is perpetual, and while the law protects it for the benefit of the public, the protection of the trade name is principally for the party entitled to it.

The property right in trademarks is recognized by common law, and has been by the courts since the latter part of the fifteenth century.. Most of the States have laws for the protection of trademarks, and the National Government has a complete system for their registration.

It is essential to the property right in a trademark that the party claiming it as his own should be the first to adopt it as such, and then to so use the mark as to show the *intent* to create a property right therein; and this may be done only by actual adoption and constant use by the originator or his successors or assigns.

The reason that the law of trademarks is

designed chiefly for the protection of the public is to prevent the substitution of an inferior for a superior article, or of one man's goods for another's.

For what may be, as well as for what may not be an appropriate trademark, is beyond the scope of this book, it being a subject of too great moment and importance to be treated in a general discussion of the subject as this is designed to be. Like the general law, it must necessarily receive the attention of one versed in the particular branch of the science, whenever the questions relating to the adoption and establishment, as well as the registration, of a trademark is involved.

Generally speaking, however, geographical names cannot be appropriated as such trademarks, and unless protected through the laws of unfair competition, there is no protection in the use of such geographical names. Neither can the name of a given commodity be used as a trademark, and this applies as well to the name of an article that is patented; for after the life of a patent has expired by limitation, the public has a right to use the name by which such patented article has been identified, as well as to its unrestricted manufacture. The name of the producer or words necessarily descriptive of the article cannot be used as trademarks.

To constitute a valid trademark and what may

be adopted for such a purpose, the name or symbol must be exclusive—that is, it must be first adopted and used by the party claiming it for marking a certain article, grade or quality of his product; and he may not infringe on the marks of others so as to create confusion and deception. Generally speaking, any original symbol, word or mark which others have not an equal right to use may be adopted as a trademark.

Registration of trademarks is not a means of *creating* them, but it serves to establish title, by proof of adoption.

The value of trademarks to a business is now almost universally understood and acknowledged; their use tends to fix in the minds of all who observe them the *object* advertised, regardless of the wording of the advertisement or whether it is ever read or not; hence the advertisement is not a loss in any event.

The Good Will and Trade Name are a species of property that may be valued and sold, and the purchaser protected in their enjoyment the same as any other property; the same is true with trademarks.

The assignment of trademarks may be made to the same extent as other property, but with one important exception—the trademark must (with few exceptions) accompany and pass to the party who purchases the good will of the business; any

general assignment of the good will, will carry with it the trademarks in use, without any special reference to such trademarks in the assignment, and this is equally true of the trade name in use.

While it is, of course, impossible to fix the value of the good will of a business with mathematical precision and accuracy, still such value may be arrived at with sufficient certainty for all practical purposes. The common rule adopted for valuing the good will is, to first ascertain the net earning capacity of the business for a given period (after deducting the current rate of interest on the capital employed), usually for a sufficient number of years to reach the general average of such earning capacity, then to divide the amount thus obtained by the number of years over which the estimate extends, and this will constitute the general average profits upon which the *value* of the good will depends. Then as to the value, it must necessarily vary according to the circumstances of the particular case. The value of the good will of a manufacturing industry cannot be ascertained in the same manner as that of a wholesale merchandising enterprise, and the principles that would apply in either case would not usually govern where a general or special retail business was involved.

A common practice in determining and fixing the value of the good will of a manufacturing

industry (where common stock is to be issued therefor) has heretofore been to place the amount at a sum upon which the annual net earnings (after deducting the current rate of interest on the average investment involved) would pay a dividend, equal, at least, to the legal rate of interest prevailing in the State where the transaction occurs. As an example, suppose the average annual net earnings to be fifty thousand dollars (\$50,000); this would be five per cent (5%) on one million dollars (\$1,000,000) and that sum would constitute the value of the good will. But this is purely arbitrary and without foundation in reason, as the good will differs so widely in character from actual money or money's worth that to make it a basis of value upon its earning power is to go further and place its intrinsic worth equal to money as well. Besides, the good will of a business has no value aside from its immediate connection with the business itself, and upon the winding up of the enterprise, by law or upon liquidation, the property vanishes.

As before intimated, no inflexible rule will apply in fixing the value of the good will of a business; its age, character, position in the peculiar field occupied, its standing and earning capacity are all *elements* of its value only; and in order to do justice to the present as well as the future prospects of an enterprise that undertakes to determine and

set up a fixed asset of this character, the utmost skill and good faith must be exercised in placing a valuation thereon.

As to the trademarks, they are integral parts of the business as a unit, and their individual value is not important, except as *important elements* in the valuation of the good will and their relative value and importance to the future of the enterprise.

Here, as with patents, it is difficult to value "future prospects and possibilities" and this must depend upon the particular circumstances of the case under consideration; for if the business has been organized and established with skill and experience behind it, its future prospects and possibilities may be of far greater value than its present good will, and in this, at least, intangible property differs from that of tangible, viz.: in that of their valuation.

**Patents and
Their Commer-
cial Value.**

It is to inventive genius that we owe much of the wonderful material progress of the world during the last few hundred years. Starting from the printing press, which has brought universal education and enlightenment, making civil and religious liberty possible, a succession of astonishing inventions has carried

civilization forward by leaps and bounds to this, the "Machine Age." The weaving inventions have clothed the humblest laborer in fabrics that once delighted kings. Steam and electricity have made all nations neighbors, and the minor special inventions and discoveries have filled the houses of the "common people" with luxuries which but a few generations ago were beyond the dreams of princes.

Recognizing the value to society of the wonderful fruits of invention and investigation, governments have sought to stimulate the efforts of inventors by the enactment of laws that enable them to reap a suitable reward for their services to humanity.

Although many an inventor has slept on his rights, and never realized enough to cover the expense of suing out a patent on his invention, yet many of the great fortunes amassed in this country have had patents for their basis. We readily recall the Pullman palace car; the telephone and numberless other electric inventions; the Westinghouse air brake; the mowing and reaping machines; the bicycle and automobile devices, and a thousand more. Many a great manufacturing business has been built up on some simple invention or improvement which cheapened the productions of some article of common use. In fact, the most fruitful field for the rank and

file of the army of inventors has been among the simpler, almost trifling, inventions, and improvements on other inventions.

The inventors of a shoe-button, a safety-pin, a hook-and-eye, the "roaming toy," a dime savings bank, etc., made quick and easy fortunes.

Notwithstanding the great number of patents issued, it seems as if the field for new ones grows wider the more the patents increase. Each new development seems to create new wants and the need of new devices. Inventions known as "novelties," and improvements on articles in every day use are constantly in demand.

Contrary to the prevailing notion among many laymen, the fact that an article has been "patented" is no conclusive assurance that an exclusive right "to manufacture and use" such an article is thereby secured to the owner. While it is true that the issuing of letters patent on an invention is *prima facie* evidence of its patentability, still it is not *conclusive* evidence.

In investigating the questions in hand, the statutory requisites to patentability first require consideration. In order that they may be understood, the law on the subject will be here given, namely:

"Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful

improvements thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, for more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor."

It is apparent that utility is one of the chief considerations upon which the Government grants its exclusive right to use and produce an invention; and this important requisite to patentability largely determines its commercial worth as well. As already appears, the invention must be "new and useful," as well as *useful*, but manifestly the fact that the invention is new would not render it of any value in the business world unless it was useful as well; therefore, in arriving at the commercial value of a patented invention utility is the first feature to consider.

The essential features that determine the commercial value of a patented invention, and the order in which they may be investigated, are: *First*, the utility, *i. e.*, the usefulness—intrinsic novelty and the probable demand; *second*, the

cost of production, *i. e.*, the manufacturing possibilities and means of producing the invention; *third*, the legal novelty—patentability, *i. e.*, the construction and validity of the specifications and claims, as well as the protection afforded thereby; and, *fourth*, the title of the patentee or alleged owner of the invention.

As to the utility and manufacturing merits and cost of an article, these are questions for the experienced business man and skilled mechanic, and they are, as before stated, of first importance in determining the commercial value of an invention.

Perhaps the simplest method of determining the legal novelty, *i. e.*, patentability of an invention, and the one primarily useful, is to see if it contains either or both of the following elements: *First*, if the article produced is as good in quality, and (as a result of the invention) such article can be produced at a cheaper rate than similar articles already on the market; or, if it is better in quality and can be produced at the same rate as other articles, or both combined; and *Second*, as to the device or method of production, if the object in view or manner of obtaining the same be new, and the device or product be useful, then it may be considered a patentable invention and subject to such protection.

The law protects simplicity and economy of con-

struction, and the fact that the invention does not appear to be a great one will not prevent its being considered as a new and useful invention. The substitution of different kinds of power for the accomplishment of a common end is not a subject of patent; the mere assembling of a number of old devices or forms for the accomplishment of a well-known result is not patentable; the omission of an element from a device so that the same result may be obtained by a less number of operations or devices *is* patentable; the combination of known elements for the production of a new result is patentable; the accomplishing of a greater result or utility from the same quality of material may be patentable, etc.

The fact that a resourceful patent attorney may have obtained letters patent on a device that did not in reality contain patentable requisites may be disclosed for the first time upon the trial of a suit for infringement. An illustration of this fact is found in a recent case decided by the Supreme Court of the United States, involving the validity of patents issued upon "sectional bookcases," where two rival manufacturers sought to establish their respective rights to the exclusive use of these now popular office and household articles, with the result that the Supreme Court held the patents to be void *for lack of patentability*.

Another practical subject for consideration

relates to questions of conveyance. The titles to patented inventions may be investigated in a similar manner to those of real estate, for the reason that the Government has a complete recording system, wherein all conveyances, licenses, etc., are (*or should be*) recorded; and an abstract of title may be had, by application to the Commissioner of Patents, and the payment of the necessary charges therefor, which depends entirely upon the number of transfers that have been recorded, and such an abstract of title is necessary to determine and show the title to any patented invention.

The subject of transfer of letters patent may be divided into three classes. *First*, the assignment of the whole or an undivided interest in an invention before letters patent have been issued; *second*, an assignment of the whole, or an undivided interest, in an invention *after* letters patent have been issued,† and *third*, a license or other conveyance, not amounting to an absolute sale of the whole or any part of the invention itself.

An invention is susceptible of being conveyed prior to the issuing of letters patent thereon; and as between the parties to such a contract the same is binding, whether the patent ever issued or not;

* See form in Appendix, page 264.

† See form in Appendix, page 266.

and should the patent issue, such contract has the same force and effect as an assignment after issue. In fact, it is not unusual for such assignment to contain authority and instruction to the Commissioner of Patents to *issue* the patent to the assignee.

As to the conveyance of a patented invention after letters patent have issued, this is comparatively a simple matter, requiring only that the person who is the *owner* of such patented inventions shall execute a formal conveyance of the same. The only important observation that need be made on the subject of actual conveyance is as to the propriety of an inventor or owner of letters patent conveying an *undivided interest* (*i. e.*, a one-half or one-third interest) in the same; for such an act may destroy the value of the monopoly in the invention. It has been demonstrated and decided that the owner of an undivided interest in an invention has all the rights of the exclusive owner so far as to manufacture, vend and sell the device in question; and besides, it is essential that in prosecuting or defending an infringement suit the owners of the entire interest must join in order to maintain or defend such a suit; and this may be impossible after the conveyance of a *part* has been made.

In relation to contracts which purport to be licenses or "shop rights" for the exclusive or

territorial right to manufacture or sell a patented invention, the wording of such contracts may amount to a transfer of the entire interest of the inventor, instead of a license or contract, unless care is exercised in the preparation of such an instrument. In general, any wording that amounts to the sole and exclusive right and monopoly of manufacturing or selling the device is a transfer of the entire interest therein.

A simple test of the question as to whether a license in reality amounts to a conveyance is if the grant vests the entire interest in the invention or transfers the monopoly therein, it is an assignment; on the other hand, if it leaves in the assignor any part of the exclusive monopoly granted under the patent, then the conveyance is a license. It is always a question of *construction* of the language used, and it is necessary that great care should be exercised in the wording of the instrument intended as a license.

The soliciting of patents is essentially a *specialty* in the practice of Patent Law, and the commercial value of a patent depends in a marked degree upon the care, skill and ability of its solicitor.

Much criticism has been made upon our patent laws on account of the opportunity which is accorded thereby to deprive the public of the benefit of new and useful inventions during the lifetime of the patent. An investigation of the pat-

ent records at Washington discloses the fact that many important improvements on existing devices now in common use have been made, and that they have been purchased by leading manufacturers in the line of business to which the invention pertains; that instead of "bringing out" such inventions, and giving the public the benefit of their improvements, they are "shelved" so to speak.

The explanation for this evidently lies in the fact that one of the most expensive departments of every manufacturer is the "experimental department" and the great expense attached to the making of constant changes in a given product, besides the confusion which would be produced thereby. At the same time these "business reasons" do not satisfy or interest the public, who have granted the patent protection to the inventor as a reward bestowed for his invention and a stimulus to future efforts.

One of the manifold benefits to be derived by adopting the corporate system inures to the inventor when, as is frequently the case, he is without sufficient means to develop and market his invention. As has been hereinbefore intimated, he may not assign an undivided interest in his invention without risking the monopoly or exclusive right to manufacture, vend and sell the same, and this may occur as well by a co-partnership arrangement for its control as by separate as-

signment; hence the almost universal adoption of the corporate plan under all such and similar circumstances.

An inventor may form a corporation under the laws of any State, and assign his invention to such corporation without endangering the rights secured to him under the letters patent from the Federal Government. As in every other case, it behooves him to protect his rights in the corporation by retaining control or a sufficient interest in the same to insure protection. The corporation becomes the sole owner of the invention by such an assignment as above suggested, and through its elasticity for adaptation to particular needs, any legal purpose may be accomplished, either through the making of a contract with the inventor or the issuance of its capital stock for the reasonable fair commercial value of the invention. And while the courts have held that there is no *presumption* of value to a patented invention, yet it may be safely said that such a value may be placed upon the invention as its particular merits and the extent of the protection afforded by the patent grant will warrant, and this may be determined by the rules referred to herein, and others which will present themselves in every case, and the reasonable value of such invention *to the corporation*, if fairly arrived at, will govern.

It has been the almost universal experience of those attempting to deal with inventors (as a class) that they greatly exaggerate the real commercial value of their inventions; and this undoubtedly is due to the application and devotion which has been bestowed to create the invention in the first instance, or the lack of experience in marketing or the development of new improvements in existing devices.

Mining Enterprises.

The vast amount of capital necessarily involved in acquiring, equipping, developing and conducting mining enterprises makes this one of the most favorable objects for corporate organization; and while many of the principles heretofore announced as relating to this form of existence generally apply with equal force to mining enterprises, still there are important questions which should be considered separately, as peculiarly applicable to such undertakings.

That there is such a legal and practical distinction between mining corporations and those organized for commercial and other undertakings has been recognized by courts of review. In considering the nature of mining as distinguished from commercial corporations, or corporations

created for the conduct of commercial enterprises generally, one court said:

“Mining corporations are *sui generis*. They are organized and carried on upon principles *wholly different* from banking, railroad, insurance and ordinary commercial corporations having a subscribed capital stock.”

And to some degree, at least, the rules relating to organizing the different *kinds* of mining corporations differ, particularly in the mode of financing. The plans that would be applicable to a corporation formed for the mining of precious metals would not ordinarily be appropriate for a corporation created for the operation of coal properties, the development of a marble or stone industry, or the operation of oil or natural gas properties.

The reason for this lies largely in the character of the undertaking. In the case first named its speculative character is to be taken into consideration, and the plans of financing applicable to mining enterprises of a speculative character differ widely from those commonly adopted for the promotion of those which are less so.

Specialization in the professions and business alike is now universal, and this fact is emphasized in the subject under consideration. An operator in the copper, lead or zinc field would not, as a rule, be equipped to operate a coal mine, and *vice*

versa. And a miner of the precious metals could not adopt the same methods used by him, and which are acquired by experience and training in that special department of mining, to either of the other classes named.

The geologist and mining engineer also specialize, as do the manufacturers and dealers in mining equipment and supplies; and the advantages of specializing in this field, as in all others, are now well recognized by all familiar with the subject. The owner of a valuable mining property which had met with disaster would now no more employ a mining engineer who was not a specialist in that particular class of mining than the same individual would call a general medical practitioner to perform a major surgical operation upon himself.

In the discussion of the subject in hand no attempt will be made to detail the history of that class of mining corporations which have been organized for questionable or fraudulent purposes—such as the acquiring of capital to pay salaries, and to provide a means for their promoters to get hold of stock certificates in order that they might get money from the inexperienced investors, the chief concern of those organizing such companies being to successfully avoid criminal prosecution for their transactions. At the same time no *extended* discussion will be at-

tempted of the innumerable plans and devices which have been heretofore adopted to finance and promote speculative mining enterprises, particularly those devoted exclusively to the mining of precious metals. It will be sufficient for the purposes of this volume to state that the manner of organization of such a corporation must be governed by the circumstances, and the laws of the State where the particular corporation is created, and to refer to some of the practical and distinguishing features generally.

The important questions of procedure which arise for consideration in the organization of and which are peculiar in a mining corporation are first, the capitalization, and this involves the necessities of the incorporators as well as questions of finance; the next is undoubtedly the *purpose* of the corporation which is to conduct such an enterprise; and the third is the domicile, or the selection of a State for its creation.

It is customary (and undoubtedly the custom will continue) to capitalize corporations that are organized to mine precious metals or to develop oil fields at an arbitrary amount, without regard to the value of the property which it is to own and operate; then to convey the mining and other claims to the corporation for all, or a large proportion of the capital stock, and to then donate back into the treasury all, or so much of the

capital stock as is to be sold for development purposes; and this might be considered the established custom, and one which is free from legal objections. Particularly is this true when such mining corporations are created under the laws of a State where the mining of precious metals is the principal industry, for in all such States special laws have been enacted to encourage the development of the State's mining resources, and the speculative nature of the undertaking is there recognized and the value placed upon the mining claims or other properties by directors of domestic corporations are conclusive.

In regard to the less speculative mining enterprises, such as those enjoyed in mining coal, copper, lead, zinc and stone, their capitalization should receive more conservative treatment, and they may be considered as more nearly approaching the commercial corporation in regard to their formation. An example of "high finance" in the consolidation of coal properties has been already shown, and the general principles therein exemplified will illustrate the possibilities of creating questionable securities by grossly-inflated valuation of the properties consolidated. It may be conceded that the latitude permissible in the valuation of properties of this character is greater than in the ordinary industrial undertaking, and that the "good-faith" rule, hereinbefore referred to, is all

that is required; that is, the exercise of good faith and the absence of fraud in the valuation of such mining properties will constitute a safe rule, both as to liability of directors or upon the capital stock issued in payment for such properties.

It is of practical importance that the capitalization of a mining corporation should be fixed with due regard for its ultimate object. If no further properties are to be acquired than the one in contemplation at the time of organization, the amount of capitalization should be governed by the value of the mineral rights or land, and the necessary working capital; and with a proper foundation the capital stock of such a corporation can be increased to meet any future expansion that may be deemed advantageous. But where a corporation is to be formed to acquire two or more developed mines, or with that ultimate object in view, the question is more difficult of solution, and no general rule can be announced that would meet the requirements of any but particular cases, or be of practical value in so doing; and it might be added that this is one of the numerous conditions which confronts the organizers of large corporations generally, and nothing but an intimate knowledge of the subject, and actual experience in its application, can qualify such organizers to properly meet and dispose of many of the important practical questions which invariably arise.

The creation of bonds which are secured by the property of the mining corporation (and with a proper sinking fund clause inserted) is frequently desirable, for the purpose of raising working capital as well as for the protection of those interested in the enterprise; and the use of such bonds has frequently been the means by which a worthy and enterprising operator has ultimately acquired the ownership of valuable mining property.

The sale of such bonds among financial institutions is often difficult, for the reason that the property upon which they are secured usually lies at a distance, and the value of such property is based largely upon its continued operation and development; and unless this is assured, such bonds are not considered as desirable security, and experience has often demonstrated that when such bonds are sold in the open market at all, it has been at a great sacrifice. However, with proper management and with the property in a developed stage, the issuance of such bonds is not only advantageous but their sale to private investors or local financiers may be effected much more readily than stock, and without unreasonable sacrifice.

The purposes or objects of mining corporations are of importance for all the reasons heretofore given under another and appropriate heading, as well as for the following, which are in a measure

peculiar to mining corporations: As before stated, it is a well-settled principle of law in every jurisdiction that a corporation cannot exceed the powers conferred upon it by its charter, and such powers are derived by and through the wording of the purposes or objects set forth in the application for such charter.

Where it is the intention of the incorporators to do more than actually operate a mine, such as to conduct a general store, to erect and maintain dwelling-houses for employes, to construct and operate electric or other power plants, tramways, etc., in connection with the mining enterprise, it is, of course, necessary that these powers should be conferred upon the corporation through its charter.

In many States there are limitations placed upon corporations owning real estate, and in such States care must be exercised not to violate such laws; for it has been held that even though the charter is *granted* for purposes that are prohibited by the general act under which such corporations are created, the unlawful acts may be shown to defeat the corporation whenever it attempts to enforce such illegal objects. In legal phraseology, corporations may, under such circumstances, be "attacked collaterally."

The following may be considered as an approved form for the wording of the special objects or pur-

poses of a mining corporation organized under the laws of the State of Illinois for the purpose of mining coal:

“To mine, buy, sell and deal in coal and its by-products; to acquire by purchase, lease or other lawful means, coal lands and properties necessary and convenient for the construction, successful operation and maintenance of coal mines and their equipment; and to do and perform any and all lawful things incidental and necessary to the successful operation of coal mines, and the production and sale of coal.”

It might be appropriate to add that the *implied powers* incident to corporate existence need not usually be stated in the charter. In many States the charter enumerates, in detail, such implied powers, while such powers are left to implication in other States, and in the last named States the wording of the purposes or objects may be limited simply to the principal objects contemplated; therefore such detailed description of incidental powers is only necessary in States requiring the same.

In relation to the domicile or State selected for the creation of a mining corporation, the observations hereinbefore made on the subject are applicable alike to such corporations; and except for the advantages to be derived by a trial in the Federal courts of possible litigation for personal

injuries (as well as other cases) such corporations should be created under the laws of the State where their physical operations are to be conducted. The laws of such States are invariably more favorable to such corporations, and particularly to their financing, and the actual executive head of the enterprise, or business office, may be, and usually is at a distance from the property operated, and often in another State.

The law relating to the transfer of real estate generally is equally applicable to the construction of conveyances and contracts relating to mining rights; but there are some practical and legal questions which will be briefly alluded to, as being particularly important in the organization and promotion of mining enterprises.

It is now well-settled law in the United States that the owner of the surface of land is also the owner of everything beneath it to the center of the earth. A few States have express statutes declaring that all minerals underlying lands owned by citizens of *foreign countries* belong to the State; and the rights of the Government to minerals underlying public lands and those rights derived through what is known as the "Apex law" are the important exceptions to the general rule above stated.

In the wording of conveyances, the significance of the word "minerals" is important, as it has

been held that this word is sufficiently comprehensive to include not only gold, silver, iron, coal, etc. (when in workable quantities) but it may also include oil and natural gas. Hence, the use of such phrases as "mineral substances," "coal and other minerals," "lead, zinc and other minerals," etc., may have important significance in such conveyancing.

Another important feature is the right of surface owners with relation to the minerals named. Of course, as regards coal, iron and other base metals, the minerals are co-extensive with the surface. In the case of gas and oil this is not so. An operator with only sufficient surface to accommodate his plant may reduce to possession as much oil or natural gas as though he owned any given amount of surface; then the Apex law, so generally recognized in all mining states, give similar rights to the owners of land or mining claims, *i. e.* to follow all veins, loads and ledges wheresoever they may lead and to appropriate all minerals to be derived therefrom throughout their entire depth, from the top or apex, where such apex lies inside of the lines or boundary of such land or claims.

It is not uncommon for extensive mining development to be done under a royalty lease, and without regard to consequences of adverse decision by courts, in possible litigation resulting

from future disagreement regarding its terms; and without taking into consideration the future possible necessities of the mining corporation. It is equally as common a practice to include in such royalty leases a provision of forfeiture in case of a breach by the operator, whereby all improvements and development work (which includes the shaft, etc.) will revert to the lessor, or owner of the land. The wisdom of purchasing *in fee* at least a sufficient amount of land upon which the mine is to be sunk and the plant located, cannot be doubted; and the advantages thereby acquired should be apparent to all interested in such an undertaking. The principal investment of a mining corporation is made in sinking its shaft and the construction of its mine generally, and without the precaution above suggested an almost total loss can occur through some informality or defect made in the royalty lease under which such development has been made.

It is customary to take an option on the tract of coal or other mineral lands in advance of their purchase, in order that prospecting may be done to ascertain the extent and quality of the mineral before paying for the same. In the Appendix hereto will be found an approved form of option agreement for this purpose.* This form supposes payment in cash for mineral lands or min-

* Page 270.

erals. A form for the same purpose, where the payments are to be made in cash, and stock of the corporation to be formed, for the development of the property, is also there inserted. The plan last suggested has a double advantage to the operator, one in reducing the cash investment in the minerals or mining rights, and the other in the securing of local interest and the co-operation of their owners.

Frequently it is deemed advisable or necessary to deposit a deed or place the title papers to mineral lands in *escrow* pending the prospecting which it is deemed necessary to do to establish the value and extent of the mineral rights so conveyed, or for various other reasons or purposes which may arise. In such event the following form (with such modifications as the particular circumstances may require) will serve as a guide and suggestion for the purpose named:

ESCROW AGREEMENT.

(To be written on envelope or other enclosure containing deed, lease or contract.)

The enclosed deed (lease or contract) of.....
.....is hereby placed in the possession and keep-

* Page 275. [This form or plan with modifications to suit conditions, has been used by the author in a number of important cases where the principal capital required was to be obtained from outside sources then beyond the reach of his client.]

ing of....., in escrow, upon the following terms and conditions, viz.:

If.....shall place or cause to be placed to the credit of....., in the..... Bank of.....on or before.....191..., the sum of.....Dollars, then and in that event, the said.....is hereby authorized, empowered and directed to deliver the enclosed deed (lease or contract) to....., or to whom he may in writing order. In case the said..... shall not so place, or cause to be placed to the credit of said.....in said Bank, the said sum of.....Dollars, on or before..... 191..., then in that event the said.....is hereby authorized and directed to return the enclosed deed (lease or contract) to the said..... or to whomsoever he may designate in writing.

.....[SEAL.]

.....[SEAL.]

....., 191...

The preparation of conveyances, and all mining contracts (as well as the doing of all things pertaining to the formation, and bringing into legal existence of mining corporations, where the rights of the individuals are to be conserved and protected) must necessarily receive the careful attention of those versed in the law, as well as the financial and practical needs of such under-

takings generally; and incidentally it might be said that there are no places in business affairs where the application of the well-known maxims, "what is worth doing at all, is worth doing well, and all good work must be paid for" and "a man who offers his services at a specially low rate generally puts them at their true value"—are exemplified as in the performance of services by the legal profession of this character. They may properly be termed "constructive services," as the results of such work are productive not only of *substantial* benefits to the employer but to the investing public and community at large as well; and the evolution in business methods to the present high state of perfection is primarily due to the use of the corporation, and the skill and well directed efforts of the profession in this modern field of specialized activity.

APPENDIX

FRANK'S "SCIENCE OF ORGANIZATION," ETC.

APPENDIX.

Appendix. There is of necessity a discrepancy between what is recorded and what is to be desired in any work that undertakes to generalize on a subject so extensive as that of business organization; and here as in the law the exact question "at issue" is rarely discussed or settled by precedent. But the general rules and modes of procedure herein announced, together with the illustrations that follow, will be sufficient to enable the resourceful individual to not only avail himself of the plans discussed, but to suggest others that will meet his particular needs.

Throughout the text reference has been made, to various illustrations given in this department of the book, and when considered in conjunction with the text on the subjects referred to, they may be adequately explained to enable the ordinary reader to appreciate their application; but there are other uses and purposes to which such illustrations may be adapted, that require further comment which has been reserved for this particular discussion.

There are many general forms published and now available to all that simply illustrate arbitrary methods of conducting corporate affairs; but such forms are, as a rule, simply their author's personal methods of accomplishing a given purpose, which might be done in a great variety of ways, and which would be equally effective and proper; hence no attempt will be made to encumber this volume with miscellaneous forms, but only those which may be of special value as practical illustrations.

It is never safe for the layman to undertake the use of forms in any event, for the most important questions (which would occur only to one versed in the law) may be overlooked and substantial rights thereby forfeited; a careful examination however, of forms and illustrations in connection with discussions on a given subject of this character is of value, principally to enable the reader to arrive at a clear and proper understanding of what *may be done* in a given case or under other conditions that may arise.

The illustrations that follow have all been in actual use by the author in various cases coming within his personal experience and are what may be termed unusual, inasmuch as they are not of the stereotyped variety so commonly published as "forms".

General Contract Between Incorporators to Form a Corporation.*

This illustrates an approved method of taking the initial step in forming a corporation under the laws of any state. With such a contract the incorporators have settled all preliminary questions and their relative rights and obligations, both to one another and to the corporation itself; besides it places in the hands of the attorney who is to organize the corporation, all the data and authority which he will require, at least preliminary to the application for charter.

The use of this contract, while not essential or necessary (particularly in the smaller organizations), can but be of advantage where a large number of incorporators are to participate, or where it is desirable that the parties should bind themselves in advance of actual subscription to the capital stock.

Should special plans of financing be desirable, that fact would materially change the phraseology in regard to the character of stock, etc., and necessarily require the attention of legal counsel; but for the usual and ordinary case, this illustration may readily be adapted and prove a well devised plan to facilitate the organization of business corporations generally.

* See page 218.

**Special Contract Between Incorporators for the Purpose
of Purchasing and Enlarging a Business.***

This illustration is susceptible to almost unlimited adaptation. The elasticity of the corporate form, as hereinbefore explained, has suggested—*and the same will continue to further develop*—means of adjusting the rights of owners of property and investors, which enable both to accomplish almost any desired result.

The illustration here shows a case where the owner of a manufacturing plant, and individuals with capital, join forces in a corporation which is to own and operate the business formerly owned by such individual. By this method it will be seen that the owner of the supposed business is materially benefited by the transaction, and the individuals furnishing the capital may be adequately protected in their investments.

It will be readily suggested to the most casual reader that this plan may also be utilized in effecting the *sale* of a business either immediately or after the corporation is organized and under operation. Such sale can be made by the transfer of stock of the former owner of the plant; and, under ordinary circumstances, his stock (received for the plant) should be of greater value than the *plant* in his hands before organization. Besides, a

* See page 221.

sale should be more readily effected after organization than before.

Here, we also see a practical illustration of the opportunity to capitalize and reduce to a substantial property right, the good-will and trade name of the business, all of which would be of little or no money value unless protected in this way.

What has already been said on the subject of corporate financing, will enable the reader to apply the various suggestions offered to meet the requirements of any condition arising in the practical use of this illustration, where a going business is to be purchased or taken over by a corporation when formed for that purpose.

Reorganization Certificate.

The use of this instrument is referred to in the text as applicable in a reorganization of an existing corporation where reasons exist for the same. The signing of such a certificate in duplicate and the surrender of the stock certificates held by the stockholder, places in the hands of the trustee selected, ample authority to proceed with such reorganization along the lines agreed upon and set forth in the reorganization certificate, and such terms may be whatever the particular cir-

* See page 227.

cumstances demand or the individuals interested may impose.

This method has proven to be advantageous (from the reorganizer's standpoint at least) in a number of important cases. One of the chief obstacles in the way of the reorganization of a corporation, where a large number of stockholders exist, is the fact that a few minority stockholders may greatly hinder or prevent the accomplishment of such an object and involve the corporation in expensive litigation should an attempt be made by the officers, or those in control, to *force* a reorganization; in adopting the method suggested, the reorganization may (nominally at least), be placed in the hands of a disinterested person, and neither the stockholders nor the corporation become involved in the attempt; and besides, this method enables the reorganizers to negotiate and treat with each stockholder separately, and to prevent undue advantage being taken by any signer of this certificate after the same is executed.

Here, as in the illustration last referred to, many additional terms and conditions may be added to meet the requirements of any case, such as the issuance of preferred or other special stock or bonds, and the relinquishing of the rights of the holders of stock for such special stock or bonds, or the making of a trust company the trus-

tee for the stockholders or corporation as the case may be; and the depositing of stock with such trust company in exchange for special Trustee Certificates or receipts is a common practice, particularly among large corporations, where a sale of the entire assets to another corporation in exchange for its stock is to be effected, or a change in the financial plans is desired.

Where the owner of a business desires to ultimately dispose of his interest therein, or in case the reorganizers of a business desire to provide for the payment of the purchase money of the tangible assets of a business reorganized, without encumbering the same by a mortgage to secure a bond issue, it has often proven advantageous within the experience of the author to provide for special stock, such as is referred to in the text, as being preferred as to dividends and assets, or to create still another species, *i. e.* a special obligation in the nature of stock, whereby the corporation obligates itself to pay a certain dividend each year on such shares (out of the profits) and not to exceed a certain specified dividend on the other stock of the corporation; then any surplus remaining after the payment of such dividends must be paid to, or for the benefit of, the holders of such special certificates from year to year, until the same have been retired.

In the hypothetical case given in the reorgani-

zation certificate above referred to, the corporation to be reorganized is there supposed to be a foreign corporation, and the principal objects to be attained by the plan suggested, is a reduction of its capitalization in order that it may be placed upon a sane working basis.

Proposition to Newly Organized Corporation, Etc.*

This exhibit illustrates an approved and convenient method of formally bringing before the stockholders and boards of directors of both the selling and purchasing corporations, to obtain the necessary authority to sell and buy the entire assets where such enterprises propose to convey their property to a newly formed company for the purpose of consolidation or reorganization.

It will be seen that the illustration in question supposes the existence of two corporations whose business is about to be absorbed and taken over by the newly formed company.

This method of procedure has a two-fold object at least; the first, is to present in a concrete form a summary of the assets to be conveyed with their valuation, and the terms of their proposed transfer, set out with much less formality than would be necessary if it were attempted to consummate such a transaction by a formal written

* See page 229.

contract of purchase and sale; and the formal acceptance of such a proposition, by the purchasing authority of the newly formed company, accomplishes everything that could be done through the use of such a contract.

The second, is to facilitate the preparation of the necessary resolutions as well as the corporate records, to effectuate such a transaction for the newly organized company as well as those of the two retiring corporations, who are to sell and convey their property under such circumstances as is here contemplated.

Besides, it is often convenient to classify, appraise, and set up in such a proposition as is here contemplated, the various assets to be taken over, so that they may readily be carried into the accounting system of the new corporation, directly from such formal proposition or from the inventory therein referred to.

Offering of Stock for Sale, Etc.*

It being necessary to present to prospective investors, the salient points and attractive features of a business, in every case where capital is sought after through the sale of stock or other corporate securities, the precedent here shown (having been

* See page 234.

successfully employed by the Author in an actual case where the opportunities detailed existed) will serve as an illustration. Innumerable forms may be employed for this purpose, and it is of course impossible to present any stereotyped plan or form of phraseology that would meet the requirements, expectations, or indorsement of any considerable number of individuals; but, it may be said, that experience has demonstrated that anything short of a plain, concise, and more or less detailed account of the offering made, is wanting in one of the essential elements that appeals to the average man with money to invest; and further, that equivocal statements of any important fact are usually detected and their use often render such an offering unsuccessful.

It will be found upon investigation that the modern methods employed by staple financial institutions in presenting offerings of corporate securities savor less of literary merit than ascertainable and controlling facts.

Appraisal of Property.*

This form may be utilized and adopted by either a Board of Directors in their official capacity, or by disinterested persons in appraising

* See page 242.

property, and form the basis of a resolution for purchasing an established business or property for the use of a corporation.

Where such appraisal has been made in detail, that is, where an itemized schedule of the property appraised is made, this should be attached and referred to, in the appropriate part of the narrative, in relation to the subject matter of the appraisal.

Appraisal companies usually have comprehensive forms for setting up and classifying assets, that make the form referred to here, applicable as a summary and convenient as a basis for the resolution following.

Resolution Ratifying Commissioners' Acts, Etc.*

This resolution is sufficient for the use of Directors (when ratifying the acts of the commissioners appointed by the Secretary of State or organizers generally, in advance of complete organization, as in Illinois) or where property has been taken and the purchase price has been paid in whole or part with stock of the corporation, and the amount agreed upon credited on the stock subscription accounts of the owners of the property conveyed.

* See page 244.

Installment Certificate and Assignment.*

Such a certificate as is here suggested is frequently issued by mining corporations, or those interested in disposing of a portion of the capital stock after the corporation is formed. Its issuance will prevent stockholders offering for sale or disposing of their stock, pending the period reserved for the sale of the stock remaining in the Treasury of the corporation as hereinbefore explained.

General By-Laws.†

Where the by-laws of a corporation or the permanent features thereof are made a part of the charter, the form here suggested, with such modifications and conditions as the incorporators may desire, can be adopted by the stockholders; but where the adoption of by-laws is left to the Board of Directors of the corporation after they are elected, such by-laws should be presented to the Board, and formally adopted by it at the first meeting after the Certificate of Complete Organization or charter has been filed for record in the proper recording office of the state creating the corporation.

Innumerable additions or changes may be made

* See page 250.

† See page 253.

to meet the requirements of incorporators; but the form here suggested with such modifications as will fit the particular case, is adequate for the needs of the ordinary business corporation.

The importance of by-laws has already been given in the text. So far as their *legal necessity* is concerned, their primary function is to control and authorize the time and method of calling and holding meetings; without them great inconvenience may result and expense be necessary to give the *actual notice* which the law requires, where there are no provisions made for otherwise serving such notice by the corporation, through its by-laws or by statute.

The remaining forms and illustrations are given for the convenience and ready use of incorporators; individual reference to them is deemed unnecessary and impracticable within the limitations of this volume.

GENERAL CONTRACT
TO
FORM A CORPORATION.

THIS AGREEMENT made this first day of November, A. D., 1909, by and between the undersigned, John Brown, William Burbank, Edward Cunningham and Raymond Williams, all of the City of Chicago and State of Illinois.

WITNESSETH, That in consideration of the mutual undertakings and agreements of the parties hereto, as hereinafter set forth, and in further consideration of the sum of one dollar by each of the said parties to the other in hand paid (at the time of the execution hereof), the receipt of which is hereby severally acknowledged, the said parties to this contract hereby agree by and among themselves and with each other as follows, to-wit:

First, That a corporation shall be formed by us under the laws of Illinois substantially as follows:

(a) The name thereof to be the Perfect Automobile Company.

(b) The capital stock of said corporation to be One Hundred Thousand (\$100,000.00) Dollars, divided into one thousand (1,000) shares of One

Hundred (\$100.00) Dollars each, said stock to be all Common Stock of uniform character and usual form.

(c) The purpose of said corporation to be substantially for the manufacture and sale of automobiles and their parts.

(d) Said corporation shall have a Board of Directors five in number, who shall all be stockholders of record at the time of their election.

(e) The officers of said corporation shall be a President, Vice-President, Secretary, Treasurer and General Manager.

(f) The location of the principal office to be at Chicago.

(g) The duration of said corporation to be 99 years.

Second, We hereby agree with each other, and the one with the other, that we will take the number of shares of the capital stock of said corporation set opposite our respective names hereunto subscribed, and will pay to the commissioners duly appointed by the Secretary of State of Illinois in that behalf, fifty (50%) per cent, of the par value of the said shares so subscribed by us respectively at the time of holding the first meeting of the said subscribers to elect a Board of Directors for said corporation; and we further agree to pay the balance of our said subscriptions whenever called upon so to do by the Board of

Directors of said corporation, after the same shall be formed.

Third, We further nominate, constitute and appoint, (————) as our (attorney or) agent, and the agent (or attorney) of the said corporation so to be formed, to create or cause to be created the said corporation in accordance with the laws of Illinois and this agreement, and to do and perform all things necessary to bring said corporation into legal existence; and we further authorize and empower our said agent (or attorney) to draw on the funds in the hands of the legally constituted officers or agents of said corporation, for the necessary expenses attending said incorporation, and we further agree that any and all contracts which our said (attorney or) agent may make in such matter shall be binding upon said corporation and also upon us jointly and severally.

IN WITNESS WHEREOF, we, the undersigned, hereby severally bind ourselves, our heirs, executors and administrators.

NAME	ADDRESS	SHARES	AMOUNT	

SPECIAL CONTRACT
TO
FORM A CORPORATION.

THIS AGREEMENT made and entered into this first day of December, A. D., 1909, by and between John Brown, party of the first part, and William Burbank, Edward Cunningham, Frank Smith, and Raymond Williams, parties of the second part, all residents of the City of Chicago in the State of Illinois:

WITNESSETH, THAT WHEREAS, the said party of the first part is the owner of and now operating under his own name, the manufacturing plant and business located at 279 Michigan Avenue in the City of Chicago, said business consisting of special tools and machinery for the manufacture of automobiles and their parts, and also a stock of raw material for the conduct of said business, as well as various new and second hand machines particularly enumerated and set forth in the inventory attached hereto marked "Exhibit A";

AND WHEREAS, the said parties of the second part are desirous of becoming interested in and identified with said business on substantially the following terms and conditions:

Now, THEREFORE, IT IS HEREBY AGREED: That in consideration of the mutual undertakings and agreements of the parties hereto, as hereinafter set forth, and in further consideration of the sum of One Dollar by each of the said parties to the other in hand paid (at the time of the execution hereof), the receipt of which is hereby severally acknowledged, the said parties of this contract hereby agree by and among themselves and with each other as follows, to-wit:

First, that a corporation shall at once be formed by us under the laws of Illinois substantially as follows:

(a) The name thereof to be The Perfect Automobile Company.

(b) The capital stock of the said corporation to be Two Hundred Thousand (\$200,000.00) Dollars, divided into Two Thousand (2000) shares of one hundred (\$100.00) Dollars each, said stock to be all common stock of uniform character and usual form.

(c) The purpose of said corporation to be substantially for the manufacture, purchase and sale of automobiles and their parts.

(d) Said corporation shall have a Board of Directors five in number, who shall all be stockholders of record at the time of their election.

(e) The officers of said corporation shall be a

President, Vice-President, Secretary, Treasurer and General Manager.

(f) The location of the principal office to be at Chicago.

(g) The duration of said corporation to be 99 years.

Second, the parties hereto agree to subscribe, take and pay for the said shares of stock in the following proportion and manner, namely: said party of the first part shall subscribe for..... shares of said capital stock; the balance of said shares of stock shall be subscribed for by the said parties of the second part as follows: said Burbank....shares, said Cunningham....shares, said Smith....shares, and said Williams....shares.

Third, the said parties of the second part severally agree to pay unto the Commissioners appointed by the Secretary of State of Illinois, for the benefit of said proposed corporation, fifty (50%) per cent of the par value of said shares of stock so subscribed for by them at the time and whenever the said commissioners shall convene and hold the first meeting of the subscribers of said capital stock, and they further agree to pay the balance remaining due and unpaid upon said shares so subscribed for by them in cash into the Treasury of said corporation, as soon as they may be called upon so to do by the Board of Directors of said Corporation when formed.

Fourth, as soon as said corporation shall be fully organized the said party of the first part hereby agrees to convey, by good and sufficient instrument of conveyance a clear and perfect title to said manufacturing plant and business as enumerated and set forth in the inventory attached hereto as Exhibit "A", aforesaid, and to accept in payment therefor (————) shares of the capital stock of said corporation at its par value, namely (————) Dollars, and the balance of said purchase money for said manufacturing plant and assets amounting to.....Dollars, in cash; the same to be paid upon the tendering of a good and legal conveyance of said plant and assets by the said party of the first part, to said corporation when formed.

Fifth, it is agreed between the parties hereto that said parties shall constitute the first Board of Directors of said corporation, and that in consideration of the experience and former connection with the said business by the said party of the first part, that he shall be the General Manager of the same and receive a salary from said corporation for his services in that behalf amounting toDollars per annum, payable in equal monthly installments of.....Dollars per month, and that a contract shall be made between the said corporation and the said party of the first part whereby his said services as General Man-

ager shall be so secured and continued for a period of two (2) years from and after the incorporation of said company as aforesaid; that as said General Manager said party of the first part shall employ all labor and purchase all material and supplies necessary for the conduct of said business, and have general supervision of the mechanical department thereof, subject to the control of the Board of Directors; and that said party of the first part shall devote his entire time, attention and best endeavors to the business of said corporation for and during the period aforesaid.

Sixth, it is understood and agreed that the said party of the first part shall assume and pay all outstanding obligations of every kind and nature existing at the time of the sale and conveyance of said manufacturing plant as aforesaid, and that he is to retain only the current book accounts and moneys due the said business at the time of said conveyance aforesaid; that all other kinds of property and property rights now owned and enjoyed by said business, including its good-will, shall be legally conveyed and inure to the said corporation when formed, and that he shall warrant and defend the title to said business and assets against all liens and claims whatsoever.

Seventh, we further nominate, constitute and appoint....., as our (attorney or) agent, and the agent (or attorney) of the said corporation

so to be formed, to create or cause to be created the said corporation in accordance with the laws of Illinois and this agreement, and to do and perform all things necessary to bring said corporation into legal existence; and we further authorize and empower our said agent (or attorney) to draw on the funds in the hands of the legally constituted officers or agents of said corporation, for the necessary expenses attending said incorporation, and we further agree that any and all contracts which our said (attorney or) agent may make in such matter shall be binding upon said corporation and also upon us jointly and severally.

THIS CONTRACT shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

.....
.....
.....
.....
.....

REORGANIZATION CERTIFICATES.

THIS IS TO CERTIFY That Richard Roe of Chicago, Illinois (hereinafter designated as the transferor), has transferred and delivered to William Smith (hereinafter designated as the transferee), Certificate No. 23 for 1,000 shares of the capital stock of THE DOE ELECTRICAL MFG. Co., for the purposes and upon the conditions following, viz.:

First. That the transfer above named is made to enable the said transferee to effect a reorganization of the said company, by reincorporating the same under the laws of the State of Illinois; said Illinois corporation to be known by the same or similar name as the present organization, and to have a capital stock of \$125,000; that the new corporation, when formed, shall have \$10,000 in cash paid in its treasury, after all obligations of the present company are discharged; and also to have in its treasury \$15,000—face value—of its capital stock for sale, at par; that said corporation, when reorganized by said transferee, shall possess and own by transfer from the Board of Directors of the present corporation all the assets thereof.

Second. That the said transferee agrees to deliver, and the said transferor agrees to re-

ceive, in lieu of said stock certificate, a new certificate in the said reorganized company, for 50 shares of its capital stock at the par value of \$10.00 per share, fully paid and non-assessable.

Third. It is further understood that this agreement is made, and the said reorganization is contemplated, for the purpose of discharging the obligations of the said THE DOE ELECTRICAL MFG. Co., and to preserve its assets for the benefit of all its stockholders, equally, and that to accomplish said objects the said transferee is hereby vested with all the powers and rights of ownership, in and to the said stock so transferred, and with full power to consummate said reorganization in accordance herewith.

Fourth. It is further agreed that the said transferee shall perfect said reorganization, as soon as may be after all the outstanding stock in the present corporation is transferred and surrendered under the terms of this certificate; that upon his failure or inability so to do, within a reasonable time, he shall redeliver and transfer said certificate to the said transferor.

IN TESTIMONY WHEREOF, the said parties hereto, have hereunto set their hands, and affixed their seals, at Chicago, Illinois, this 4th day of May, A. D. 1907.

RICHARD ROE, [SEAL.]

WILLIAM SMITH, [SEAL.]

PROPOSITION TO NEWLY ORGANIZED CORPORATION.

Chicago, Illinois, December 16, 1913.
The American Manufacturing Company,
Chicago.

Dear Sirs:

The undersigned, The Brevoort Manufacturing Company and The Close Company (corporations created and existing under and by virtue of the laws of the state of Illinois), by order of their respective boards of directors and in pursuance of a resolution duly passed by unanimous vote of all of their stockholders, hereby submit to your corporation the following proposition, namely:

The undersigned hereby offer to sell, assign, convey, transfer and set over unto your corporation the following enumerated real and personal property and assets, at the valuations set opposite the respective items thereof, namely:

1. REAL ESTATE:

- (a) Lots numbered seven (7) and eight (8) in block nineteen (19), in the city of South Chicago, Illinois, with the buildings thereon, upon the valuation of \$86,785.94

- | | |
|--|-----------|
| (b) All of lot nine (9) in block nineteen (19) in the city of South Chicago, Illinois, with the buildings thereon, upon the valuation of... | 12,000.00 |
| (c) All of lot ten (10) in block nineteen (19) in the city of South Chicago, Illinois, with the buildings thereon, upon the valuation of | 10,964.59 |
| (d) All of the north one-half ($\frac{1}{2}$) of lot eleven (11) in block nineteen (19) in the city of South Chicago, Illinois, with the buildings thereon, upon the valuation of... | 8,641.69 |

2. PERSONAL PROPERTY:

- | | |
|--|--------------|
| (a) Entire manufacturing plant now located on the real estate above described, and consisting of equipment for manufacturing, power plant, boilers, engines, etc., etc., valued at | 116,560.53 |
| (b) Raw material on hand, as per inventory, and located in the city of South Chicago, Illinois, valued at \$..... | } 107,461.23 |
| (c) Goods in bond and valued at \$..... | |
| (d) Manufactured package goods on hand, consisting of..... and valued at \$..... | |

(e) Book accounts and accounts receivable, amounting to	92,757.35
(f) Trade marks and copyrights on brands, valued at	48,000.00

Total

Such property and assets to be conveyed clear and free of all claims and liens of whatsoever nature, and the undersigned corporations are to receive in full payment therefor the following considerations, namely:

1. That your company assume all the outstanding liabilities of the undersigned, which amount, according to the certificate of the treasurers thereof, to \$.....

2. Five hundred (500) shares of the preferred capital stock of your corporation at the par value thereof.

3. Two hundred (200) shares of the common capital stock of your corporation at the par value thereof.

The said capital stock to be issued and delivered to or upon the order of....., as agent, for and on behalf of the stockholders of the undersigned corporations and a receipt by such agent for said stock issued to the stockholders of record of the undersigned shall be a full discharge of your corporation under this proposition.

It being impracticable to describe, inventory and transfer at this time each and every item of property belonging to this company, and it being the intention so to do, it is agreed that any and all additional property subsequently tendered your company shall be accepted and taken over at the agreed value thereof from time to time and paid for in cash or shares of your capital stock, as may be agreed upon by the officers of our respective corporations at the time of such transfer.

If this proposition is accepted by your corporation, The American Manufacturing Company, such acceptance when noted hereon shall constitute a contract made in the state of Delaware between your corporation and the undersigned.

Respectfully submitted,

THE BREVOORT MANUFACTURING COMPANY,

By

President.

ATTEST:

.....

Secretary.

THE CLOSE COMPANY,

By

President.

ATTEST:

.....

Secretary.

The foregoing proposition is by order of the
board of directors of this company duly accepted.

THE AMERICAN MANUFACTURING COMPANY,

By
President.

ATTEST:

.....

Secretary.

PRIVATE OFFERING

\$100,000.00

THE AMERICAN MANUFACTURING
COMPANY

CHICAGO, ILLINOIS

Seven Per Cent Cumulative Preferred Stock
Preferred as to both Dividends and Assets
Par Value \$100 per Share
Fully Paid and Non-Assessable
Offered at Par

CAPITALIZATION.

	Authorized	Issued
1500 Shares 7% Cumulative Preferred Stock	\$150,000	\$ 50,000
3500 Shares Common Stock.	350,000	200,000

NO BONDED INDEBTEDNESS.

The American Manufacturing Company was organized under the laws of Delaware in December, 1913. It has taken over and now owns all of the real and personal property formerly owned

and controlled by both The Brevoort Manufacturing Company and The Close Company.

The company has qualified under the foreign corporation laws of the state of Illinois and is now in full operation and carrying on the business of both the above named corporations.

Officers: WILLIAM SWEET, President;
ROBERT JONES, Vice-President;
HENRY JAMES, Treasurer;
JOHN WILLIAMS, Secretary.

Directors: WILLIAM SWEET, Chicago, Illinois.
ROBERT JONES, Chicago, Illinois.
HENRY JAMES, Chicago, Illinois.
JOHN WILLIAMS, Chicago, Illinois.
and
M. J. WILLIAMS, Wilmington, Del.

The following is a brief outline of the growth and earning capacity of The Brevoort Manufacturing Company and The Close Company from January 1, 1905 to December 1, 1913, which business, as above stated, is now owned by The American Manufacturing Company:

Number of Cases of Star Package Goods
Manufactured and Sold:

Year ending July 1, 1906.....	8,900
Year ending July 1, 1913.....	138,000

July 1, 1913 to December 31, 1913..... 174,045
 (when business was taken over by
 present company.)

Increase in Bulk Product Capacity:

Year ending July 1, 1906..... 500 Cases.
 Year ending January 1, 1914.....1,000 Cases.

Summary of Net Earnings as shown by audits of
 certified accountants:

From July 1, 1905 to July 1, 1911.... \$40,925.98
 From July 1, 1911 to July 1, 1912.... 55,759.71
 From July 1, 1912 to July 1, 1913.... 51,505.83
 From July 1, 1913 to Jan. 1, 1914 (6 mo.) 43,989.70

NOTE: In 1911 The Brevoort Company paid off
 and cancelled a bond issue of \$100,000.00.

The following is a financial statement of The
 American Manufacturing Company at the com-
 mencement of business January 1, 1914:

RESOURCES:

Real estate and buildings:

Lots 7 and 8, block 19 \$86,785.94
 Lot 9, block 19..... 12,000.00
 Lot 10, block 19..... 10,964.59
 ½ lot 11, block 19... 8,641.69 118,392.22
 All the above is located in the city of South
 Chicago, Illinois.

Manufacturing Plant:

Machinery, factory boilers and engines, power plant, etc., located on above real estate....	116,560.53
---	------------

Trade Marks:

Trade mark and copyrights on brands, etc.	48,000.00
--	-----------

Current and Working Assets:

Inventories	107,461.23
-------------------	------------

Accounts and bills receivable	92,757.35
-------------------------------------	-----------

Cash and sight exchange on hand and in bank	10,514.71	210,733.29
---	-----------	------------

\$493,686.04

LIABILITIES:

Notes payable	\$151,200.00
---------------------	--------------

Accounts payable ...	17,542.54	\$168,742.54
----------------------	-----------	--------------

Profit and Loss.....		43.50
----------------------	--	-------

Capital Stock:

Common stock 2,000 shares issued.....	\$200,000.00
---------------------------------------	--------------

Preferred stock 500 shares issued	50,000.00	250,000.00
---	-----------	------------

Surplus		75,100.00
---------------	--	-----------

\$493,686.04

The real estate shown on statement is located in the heart of the city of South Chicago and is free of all incumbrances. Values placed upon buildings and machinery based on the depreciated values of Appraisal Company, made in 1909, with additions and depreciations taken into account since that time. Real estate value of Lots 7, 8 and 9, basis of appraisal; Lot 10 and one-half of Lot 11, basis actual cost. Trade marks, we think, are placed at a very conservative value, as the star mark alone could be readily sold for \$50,000.

No consideration whatever was paid for the good will of either company when the merger was completed.

The company has decided to sell privately and at par the \$100,000 of preferred stock unissued, the proceeds to be used for working capital. This will give an ample working capital, with a material reduction in the amount of current liabilities.

PREFERRED STOCK PROVISIONS.

“The preferred stock shall be entitled out of any and all surplus net profits, whenever ascertained, to cumulative dividends at the rate of seven per centum (7%) per annum in each and every year in preference and priority to any payment of any dividends on the common stock for each year.

“If, after providing for the payment of full dividends for any year on the preferred stock, and for any balance that may remain due on the cumulative dividends on such preferred stock for preceding years, there shall remain any surplus net profits, the board of directors may declare, and out of such surplus net profits may pay annual dividends upon the common stock of the said corporation to the extent of but not exceeding seven per centum (7%) upon such common stock, but no such dividends shall be declared or paid until the cumulative dividends shall have been paid in full upon the preferred stock for such year, and for all preceding years; and after the payment of such cumulative dividends upon the preferred stock and the dividends upon the common stock, the remainder of any surplus net profits shall be applicable to the payment of further dividends equally per share upon both preferred and common stock.

“In case of the dissolution or termination (whether voluntary or involuntary) of the corporation, the preferred stock and the holders thereof shall also be entitled to preference in the distribution of the assets and property of the corporation, and any and all such assets and property in case of such dissolution shall be applied first to the payment in full of the principal of the said preferred capital stock at par with all

cumulative dividends thereon in preference and priority to any payment upon the common stock; and, after the payment to the holders of the preferred stock at its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

“The common stock only may be increased as provided by law.”

In the organization of The American Manufacturing Company and in taking over the assets of the two companies named, no “promotion stock” was issued and no “inflated values” were placed upon the assets. On the contrary, less than book values was paid for many of the working assets, and no valuation placed upon the good will of either company.

The increased net earnings in the last three years represent the accumulated benefits derived from increased volume of business and natural growth, together with the cumulative effect of high quality of products, continuous, judicious advertising—the cost of which was paid each year out of the earnings of that year.

The American Manufacturing Company gets the benefit of this increased volume and growth, with only a nominal charge for trade marks.

The common stock held in the treasury will

probably not be issued until needed for improvements or increase in plant, or in purchasing further manufacturing facilities.

No change of management is contemplated; no cash will be withdrawn from the company, and there will be no change in ownership, except the change caused by new purchasers of preferred stock now offered for sale.

All orders for stock will be received subject to prior sale.

Respectfully submitted,

THE AMERICAN MANUFACTURING COMPANY.

FORM OF APPRAISAL OF PROPERTY, TO BE ACCEPTED
BY A CORPORATION IN PAYMENT FOR STOCK.

CHICAGO, ILLINOIS, May 12th, 1907.

We, the undersigned commissioners,* (heretofore, on the 29th day of April, 1907, appointed by the Secretary of State of Illinois), having carefully examined, investigated and valued the plant, machinery, assets and good will of the business, heretofore owned and controlled by The Doe Electrical Mfg. Co., of 333 Plymouth Avenue, in the City of Chicago, do appraise said assets of said business as follows:

Machinery, tools, lathes, presses, etc., etc., as per inventory attached hereto, marked Exhibit "A".....	\$ 64,900.00
Stock of finished and unfinished product and merchandise, as per inventory attached hereto, marked Exhibit "B"	25,400.00
Office outfit and fixtures as per inventory attached hereto, marked Exhibit "C"	1,200.00

* By here substituting the word Directors, in place of the word Commissioners the form may also be utilized by them.

Good will and intangible rights as per
assignments and conveyances here-
to attached, marked Exhibits "D,"
"E" and "F" 8,500.00

Total appraised value.....\$100,000.00

Respectfully submitted,

WILLIAM JOHNSON, }
HENRY SMITH, }
HENRY JONES, } (or Board of Directors).

RESOLUTION RATIFYING COMMISSIONERS' ACTS IN
APPRAISING AND ACCEPTING ASSETS TO BE TURNED
IN TO A CORPORATION, IN EXCHANGE FOR STOCK,
UPON A REORGANIZATION.

WHEREAS, This company was organized for the purpose of engaging in the manufacture and sale of electrical appliances and supplies, and particularly to acquire, own and operate the business heretofore owned and conducted by The Doe Electrical Mfg. Co., at 333 Plymouth Avenue, in the City of Chicago, and

WHEREAS, It appearing to the Board of Directors of this company that the commissioners, heretofore on to-wit: the 9th day of May, 1907, appointed by the Secretary of State of Illinois to open books of subscription to the capital stock of this company, did in accordance with their authority and duty in the premises on to-wit: the 21st day of May, 1907, appraise and take over, as such commissioners and trustees for this company, the plant, business and assets of The Doe Electrical Mfg. Co., and are now holding the same as such commissioners and trustees subject to the action of this Board; and,

WHEREAS, It further appears, from the minutes

and proceedings of said commissioners, recorded in the minute book of this company, that said plant and assets were duly appraised and valued at the sum of One Hundred Thousand (\$100,000) Dollars, and that the said appraisal and valuation were carefully and properly made, and the valuation placed thereon is, in the judgment of this Board, fair and reasonable; and,

WHEREAS, Said property and assets have been re-appraised by this Board, and valued at said sum of One Hundred Thousand (\$100,000) Dollars, and it is the concensus of opinion of this Board that the acquiring of said property is essential to the best interests of this company, in order that it may become immediately a going and paying concern.

Therefore, be it Resolved, That this company do purchase of the said, The Doe Electrical Mfg. Co., through said commissioners,* the said goods, chattels and property mentioned and set forth in the minutes and proceedings of the said commissioners herein recorded, and set forth in the bill of sale accompanying said transfer to them, from said, The Doe Electrical Mfg. Co., and that the action of said commissioners in the premises be and the same is in all respects, hereby ratified, confirmed and adopted; and that the President

* Or Incorporators.

and Secretary of this company be, and they are hereby authorized, empowered and directed to issue on behalf of this company, ten thousand (10,000) shares of its capital stock at par, to the several stockholders of The Doe Electrical Mfg. Co., as their rights appear by the terms of said sale, and in accordance with the resolution of the Board of Directors of said, The Doe Electrical Mfg. Co., conveying said property to said commissioners, in payment for said goods, chattels, and property, and the Treasurer of this company is also hereby authorized and directed to credit the said sum of One Hundred Thousand (\$100,000) Dollars upon the subscription of William Smith to the capital stock of this company heretofore made by him.

RECEIPT TO BE ISSUED BY THE COMMISSIONERS IN
ILLINOIS (OR BY A TRUSTEE IN ANY STATE) FOR
PAYMENT ON ACCOUNT OF STOCK SUBSCRIPTION,
IN ADVANCE OF COMPLETE ORGANIZATION.

No.	No.....	No. of shares....
	THE JOHN DOE ELECTRIC Co., Chicago.	
Shares	\$.....	
	THIS CERTIFIES, that..... of, being an original subscriber for shares of the capital stock of THE JOHN DOE ELECTRIC Co. (a corporation in process of or- ganization under the laws of the State of Illinois), at its par value of \$10.00 per share, has paid to us, as commissioners, duly ap- pointed by the Secretary of State of Illinois (and also trustees), for said corporation, the sum of dollars, to apply on account of said subscription, in accordance with its terms, the same being% of the total amount thereof.	
Name	THIS RECEIPT IS ISSUED on be-	

Amount,	half of said THE JOHN DOE ELECTRIC Co., and upon the condition
\$.....	that as soon as the said corporation is fully organized, that said payment hereby acknowledged will be credited on the said subscription, and that upon the surrender of this receipt by the owner thereof, and the payment of the balance due upon said subscription, according to its terms, a regular and duly executed stock certificate of said corporation will be issued to the said subscriber or his assignee.
Installment,	Dated at Chicago, Ills., this ,
..... day of A. D.,
Date,	190...
.....190..	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> </div> <div style="font-size: 3em; margin: 0 10px;">}</div> <div style="flex: 1;"> <p>Commissioners</p> <p>(or Trustees).</p> </div> </div>

ASSIGNMENT OF THE FOREGOING COMMISSIONERS'
RECEIPT AND THE SUBSCRIPTION UNDER WHICH
THE SAME IS ISSUED.

FOR VALUE RECEIVED hereby sell,
assign and transfer unto
..... all my rights, title and
interest in and to the subscription heretofore made
by me to shares of the capital stock of
THE JOHN DOE ELECTRIC Co., together with the
payment made thereon, as evidenced by the within
Commissioners' receipt.

This assignment and transfer is made upon and
in accordance with the terms and conditions of
my said subscription, and I do hereby authorize
and instruct the duly authorized officers of said
corporation to issue the stock subscribed for by
me, to the order of my said assignee upon
..... compliance with all the conditions of my
said subscription and the due surrender of this
certificate.

Dated at this day of
..... A. D. 190...

[SEAL.]

Witness,

INSTALLMENT CERTIFICATE, FOR USE OF A CORPORATION
WHEN SELLING STOCK TO BE PAID FOR IN
INSTALLMENTS.

No.	No. Shares THE JOHN DOE ELECTRIC Co., Chicago.
Shares	\$. THIS CERTIFIES that, a subscriber for Shares of the Capital Stock of THE JOHN DOE ELECTRIC Co., at its par value of \$10.00 per share, has this day paid into the treas- ury of said corporation to be ap- plied on account of said subscrip- tion, the sum of \$....., same being an installment of \$..... per share.
Name, 	IT IS MUTUALLY AGREED between the holder hereof, and THE JOHN DOE ELECTRIC Co., that the issu- ance of said shares of stock is subject to the conditions of the said subscription, and that the regular stock certificates of said corporation are not to be issued

Rec'd on Acc't. \$..... Date,	thereunder, until the first day of June, A. D., 1908; and that upon the payment of the remaining in- stallments of said subscription in accordance with its terms, and the due surrender of this certifi- cate, such regular stock certifi- cate will, upon said first day of June, 1908, be duly issued to the said subscriber or his assignee. Dated at Chicago, Ill., this day of, 1907. <div style="text-align: right;"> Treasurer. [CORPORATE SEAL.] Attest: Secretary. </div>
---	---

ASSIGNMENT OF THE FOREGOING INSTALLMENT CERTIFICATE, AND THE SUBSCRIPTION UNDER WHICH THE SAME IS ISSUED.

FOR VALUE RECEIVED hereby sell, assign and transfer unto all my rights, title and interest in and to the subscription heretofore made by me to shares of the capital stock of THE JOHN DOE ELECTRIC Co., together with the payment made thereon, as evidenced by the within installment certificate.

This assignment and transfer is made upon, and in accordance with, the terms and conditions of my said subscription, and is subject to the conditions thereof; and I do hereby authorize and instruct the duly authorized officers of said corporation to issue the stock subscribed for by me, to the order of my said assignee on the first day of June, A. D. 1908, upon compliance with all the conditions of my said subscription and the due surrender of this certificate.

Dated at this day of A. D. 190...

.....[SEAL.]

Witness

BY-LAWS
OF
THE JOHN DOE ELECTRIC CO.

ARTICLE I.

BOARD OF DIRECTORS.

Sec. 1. The Board of Directors of this Company shall consist of five (5) stockholders, who shall hold their respective offices for one (1) year, and until their successors are elected.

ARTICLE II.

OFFICERS.

Sec. 1. The officers of this company shall consist of a President, a Vice President, a Secretary and a Treasurer, and such other officers and agents as shall, from time to time, be deemed necessary by the Board of Directors.

Sec. 2. Such officers shall hold their respective offices for the period of one (1) year following their election, and until their successors are elected, and with salary, if any, as shall be provided by the directors.

Sec. 3. Any officer may be removed by the Board of Directors, when, in their judgment, the interests of the company so requires.

ARTICLE III.

STOCKHOLDERS' MEETINGS.

Sec. 1. The annual meeting of the Stockholders of this company shall be held at its principal office in Chicago on the second Tuesday of May of each year at the hour of three o'clock P. M.

Sec. 2. A notice of such meeting, giving the day and the hour thereof, shall be signed by the secretary, and mailed to each stockholder of record as the stockholder's address appears on the books of the company, or so far as the same are known to the secretary, at least ten (10) days before said meeting day.

Sec. 3. Any business may be transacted at such annual meeting without specifying the same in the notice therefor.

Sec. 4. The president, or any two (2) members of the Board of Directors, may call special meetings of the stockholders of this company, which shall be held at the general office of the company in Chicago, or at such other place in the City of Chicago, and at such hours, as the president or such directors may determine; and a notice, briefly

stating the subjects which will come before such special meeting, shall be mailed to each stockholder at his last known address, at least five (5) days before the time for holding said meetings.

ARTICLE IV.

MEETINGS OF BOARD OF DIRECTORS.

Sec. 1. The regular annual meeting of the Board of Directors of this company shall be held on the second Tuesday of May, at the office of the company in Chicago, immediately after the annual stockholders' meeting.

Sec. 2. Three (3) of the Board of Directors shall constitute a quorum for the transaction of any business at any meeting.

Sec. 3. The president of this company may call special meetings of the Board of Directors whenever he may deem it necessary so to do.

Sec. 4. The secretary shall, upon the request of the president, mail postpaid to the address of each director, so far as the same appears on the company's books, a notice of all special directors' meetings and shall specify briefly therein, the subjects that will come before the meeting, at least five (5) days before such meeting day.

Sec. 5. No business shall be transacted at any special directors' meeting, except that specified in the notice or call therefor.

ARTICLE V.

ORDER OF BUSINESS AT ALL MEETINGS.

Sec. 1. The order of business at all meetings of the Board of Directors and Stockholders, shall be as follows:

First—Roll call.

Second—Reading minutes of last meeting.

Third—Considering communications to the Board or Stockholders.

Fourth—Reports of officers to the Board or Stockholders.

Fifth—Unfinished business.

Sixth—Original resolutions and new business.

ARTICLE VI.

THE PRESIDENT.

Sec. 1. The president shall preside over all meetings of the Board of Directors and Stockholders, at which he may be present.

Sec. 2. In the absence of the president at any directors' meetings, the vice president shall be the acting president for such meetings.

Sec. 3. In case the office of treasurer and that of president of this company shall be filled by different persons, then all notes and bonds, or other evidences of indebtedness, shall be countersigned by the president.

ARTICLE VII.

VICE PRESIDENT.

Sec. 1. The vice president of the company shall take an active part in the conduct of the business, and his duties and responsibilities shall be determined from time to time, by the Board of Directors.

Sec. 2. In the absence of the president at any directors' meeting, or in his absence from the city for any protracted period, the vice president shall be the acting president.

ARTICLE VIII.

THE SECRETARY.

Sec. 1. The secretary of the company shall attend all meetings of the stockholders and directors when practicable; in his absence a secretary pro tem, or acting secretary shall be appointed.

Sec. 2. The secretary shall keep a correct record of the proceedings of the Board of Directors and of the stockholders in the corporate record book of the company, and he shall perform such other duties, from time to time, as the Board of Directors may by resolution designate.

Sec. 3. The secretary shall countersign all checks drawn upon the funds of this company and

attest such other formal instruments as require the same.

ARTICLE IX.

THE TREASURER.

Sec. 1. The treasurer shall keep the moneys of the company in such bank, or banks, as may be designated by the Board of Directors; the deposit account shall be kept in the name of the corporation.

Sec. 2. He shall sign all checks, drafts, notes, or other evidences of indebtedness, for and on behalf of the company, and have full charge of its financial affairs, subject, however, to the direction of the Board of Directors.

Sec. 3. All checks drawn by the treasurer shall be countersigned by the secretary before they are issued.

Sec. 4. The treasurer shall take an active part in the conduct of the business, and his duties and responsibilities shall be determined, from time to time, by the Board of Directors.

ARTICLE X.

ANNUAL REPORTS.

Sec. 1. It shall be the duty of all officers of the corporation to make full and complete written

reports to the Board of Directors annually, on the second Tuesday of May in each year, of all matters pertaining to their respective offices, and the board may require any officer of the corporation, at any time, to make such reports, touching the business of his office, as they shall deem necessary.

ARTICLE XI.

CHECKS, DRAFTS, MORTGAGES AND BONDS.

Sec. 1. All checks and drafts shall be executed in the company's name by the treasurer, and countersigned by the secretary.

Sec. 2. In case the office of treasurer and that of president of this company shall be filled by different persons, then all notes, bonds or other evidences of indebtedness, shall be countersigned by the president, before they are issued.

Sec. 3. In case of the issuing of any mortgages or bonds on the plant or property of the company, it shall be necessary to the validity thereof that authority be first obtained from the stockholders.

Sec. 4. All promissory notes, mortgages and bonds issued by the company shall be executed by the president, countersigned by the treasurer, and attested by the secretary.

ARTICLE XII.

CERTIFICATES OF STOCK.

Sec. 1. All certificates of stock shall be signed by the president and secretary, and attested by the seal of the company.

Sec. 2. Capital stock shall be transferable on the books of the corporation, only upon return and delivery of the certificate so transferred, duly endorsed; the secretary shall cancel the same and issue a new certificate or certificates to the assignee.

Sec. 3. No person shall be entitled to vote at any meeting of the stockholders, unless his ownership of stock shall appear on the books of the company on the first day of the month preceding the time of such meeting, except in case of executors or administrators.

Sec. 4. Any stockholder may vote by proxy, duly authorized in writing and presented and filed with the secretary.

Sec. 5. In case of loss or destruction of stock certificates by the owners thereof, new certificates may be issued in lieu thereof only upon such terms and conditions as the Board of Directors may impose.

ARTICLE XIII.

SALARIES.

Sec. 1. No salaries of any kind shall be paid to or claimed by any officer of this company, (as such) unless the amount of such salary is fixed and provided for by order or resolution of the Board of Directors, adopted prior to the performance of the services in question and recorded in the minute book of the company.

ARTICLE XIV.

VACANCIES.

Sec. 1. Vacancies in any of the offices may be filled by the directors of this Company for the unexpired term, at any regular or special meeting of the Board.

Sec. 2. In the absence or disability of any officer or agent, the directors may, if they see fit, appoint in his stead an acting officer or agent who shall perform the duties of his office, during such absence or disability, under the directions of, and to be governed by the Board of Directors.

Sec. 3. Whenever a vacancy occurs in the Board of Directors of the Company, the same shall be filled by the stockholders at any regular or special meeting thereof.

ARTICLE XV.

ADDRESSES.

Sec. 1. It shall be the duty of each stockholder, officer and director to inform the secretary of his postoffice address, and of any change in the same; and it shall be the duty of the secretary to keep a book of such addresses.

Sec. 2. Notices, mailed post paid, to the addresses so given shall be deemed sufficient notice for any and all purposes.

ARTICLE XVI.

DIVIDENDS.

Sec. 1. Dividends may be declared from the net profits of the company, at such times, and in such amounts, as the Board of Directors shall, from time to time, deem proper.

ARTICLE XVII.

CORPORATE SEAL.

Sec. 1. It shall be the duty of the Board of Directors, at their first meeting, to adopt a corporate seal for the corporation; and to affix an impression of the same upon the record book of the corporation opposite this article.

ARTICLE XVIII.

AMENDMENTS.

Sec. 1. These by-laws, or any of them, may be altered, amended, or repealed at any regular or special meeting of the Board of Directors, and at such meetings new by-laws may be added; provided thirty (30) days written or printed notice shall be given to all stockholders of any such intended alteration, amendment or repeal.

Adopted, this 16th day of May, 1907.

JOHN DOE,
RICHARD ROE,
WILLIAM SMITH,
HENRY BROWN,
JAMES JOHNSON,

Attest:

HENRY JONES,
Secretary.

FORM OF ASSIGNMENT OF INVENTION BEFORE
PATENT.

(From "Rules of Practice," U. S. Patent Office.)

WHEREAS, I, John Jones, of Chicago, in the County of Cook, and State of Illinois, have invented a certain new and useful improvement in electric engines, for which I am about to make (or have heretofore on the day of A. D. 190.. made) application for Letters Patent of the United States;

AND WHEREAS, William Smith of Chicago, County of Cook, State of Illinois, is desirous of acquiring an interest in the said invention and in the Letters Patent to be obtained therefor;

Now, THEREFORE, To all whom it may concern, be it known that, for and in consideration of Five Thousand Dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Jones, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said William Smith the full and exclusive right to the said invention, as fully set forth and

* If application for Letters Patent have been made, give number of application, as well as date.

described in the specification prepared and executed by me on the 5th day of March, 1907, preparatory to obtaining Letters Patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said Letters Patent to the said William Smith, as the assignee of my entire right, title and interest in and to the same, for the sole use and behoof of the said William Smith and his legal representatives.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my seal, this 25th day of June, 1907.

JOHN JONES. [SEAL.]

In the presence of

HARRY WILLIAMS.

FORM OF ASSIGNMENT OF UNDIVIDED INTEREST IN
LETTERS PATENT.

(From "Rules of Practice," U. S. Patent Office.)

WHEREAS, I, John Jones, of Chicago, County of Cook, and State of Illinois, did obtain Letters Patent of the United States, for an improvement in electric engines, which Letters Patent are numbered * * * and bear date the 30th day of June, in the year 1907; and whereas William Smith, of Chicago, County of Cook, and State of Illinois, is desirous of acquiring an interest in the same:

Now, THEREFORE, To all whom it may concern, be it known that, for and in consideration of the sum of One Thousand (\$1,000) Dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Jones, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said William Smith the undivided one-half part of the whole right, title, and interest in and to the said invention, and in and to the Letters Patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said William Smith for his own use and behoof, and for the use and behoof of his

legal representatives, to the full end of the term for which said Letters Patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my seal, at Chicago, in the County of Cook, and State of Illinois, this 6th day of July, A. D. 1907.

JOHN JONES. [SEAL.]

In presence of

HARRY WILLIAMS.

FORM OF ASSIGNMENT OF ENTIRE INTEREST IN
PATENT.

(From "Rules of Practice," U. S. Patent Office.)

WHEREAS, John Jones, of Chicago, in the County of Cook, and State of Illinois, did obtain Letters Patent, of the United States, for an improvement in electric engines, which Letters Patent are numbered * * * and bear date the 30th day of June, in the year 1907;

AND, WHEREAS, I am now the sole owner of said patent, and of all rights under the same; and, whereas, THE JOHN DOE ELECTRIC Co. (a corporation of Illinois), of Chicago, County of Cook, State of Illinois, is desirous of acquiring the entire interest in the same:

Now, THEREFORE, To all whom it may concern, be it known that, for and in consideration of the sum of ten thousand dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Jones, have sold, assigned and transferred, and by these presents, do sell, assign and transfer, unto the said, THE JOHN DOE ELECTRIC Co., the whole right, title and interest in and to the said improvements in Electric Engines and

in and to the Letters Patent therefor aforesaid:

The same to be held and enjoyed by the said THE JOHN DOE ELECTRIC Co., for its own use and behoof, and for the use and behoof of its legal representatives, to the full end of the term for which said Letters Patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal, at Chicago, in the County of Cook, and State of Illinois, this 18th day of May, A. D. 1907.

JOHN JONES. [SEAL.]

Signed, sealed and delivered in presence of

WILLIAM SMITH.

FORM OF COAL OPTION,
With Deferred Payments:

THIS AGREEMENT, Made and entered into this
..... day of, 190.., between
..... of County,,
party of the first part, and of
....., party of the second part:

WITNESSETH, That the party of the first part
in consideration of one dollar (\$1.00) and other
good and valuable considerations to
in hand paid by the said party of the second part,
the receipt of which is hereby acknowledged, does
hereby grant and sell unto said party of the second
part, his heirs or assigns, the exclusive right, or
option, for the period of months from
the date hereof, to purchase at the price and upon
the terms hereinafter stated, all the coal and
mineral lying and being under the surface of the
following described real estate situate in.....
..... County, to-wit:
.....
.....
.....
the said above described real estate containing...
..... acres of land, more or less.

Said party of the second part hereby agrees that he will, within 30 days after like options are obtained on at least 1,000 acres of coal near or adjacent to said premises above described, begin drilling, and then cause to be put down upon or in the neighborhood of the above described real estate, one or more drill holes for the purpose of ascertaining and testing the amount and quality of coal that may be found in said vicinity; and, that as soon as said drilling shall be completed, and it is thereby demonstrated to the satisfaction of the said party of the second part, that coal of sufficient thickness and quality underlies said above described premises, then and in that event, said party of the second part hereby agrees to pay for said coal above described at the price hereinafter mentioned, in the following manner, to-wit: *First*—to pay to the party of the first part one quarter of the purchase price in cash; *Second*—to give to the said party of the first part his promissory note for one quarter of the purchase price of said coal; *Third*—to give to the said party of the first part his promissory note for one-half, or the balance, of the purchase money, said notes to be payable to the order of said party of the first part on or before one and two years, respectively, after the date thereof, with interest at the rate of 6% per annum, and the same to be secured by a mortgage in the

usual form upon said coal and premises above described.

And the party of the first part hereby agrees at or before the expiration of months from the date hereof, to convey to the said party of the second part, his heirs, legal representatives or assigns, by a good and sufficient WARRANTY DEED accompanied by a merchantable abstract, brought down to date, at and for the price of dollars per acre, to be paid by said party of the second part in the manner hereinbefore mentioned, all the coal and mineral lying under said above described premises, together with the right to mine, dig and remove the same therefrom, and together with the right to use all entries under said premises for the purpose of hauling, mining and removing coal from any other lands near or adjacent to the above described premises.

And under the continuance of this option the party of the first part hereby grants to the party of the second part the right of ingress and egress over said premises for the purpose of prospecting and drilling for coal on said premises, and the right to erect such structure or structures as are necessarily incident to the carrying out of said work, and hereby releases said party of the second part from all claims for damages which may arise upon account of said drilling and prospecting, except damage to growing crops (if any), for

which said second party agrees to pay a just compensation.

Said party of the first part further agrees to sell to said party of the second part, his heirs, or assigns, at any time within one year after the purchase of said coal as aforesaid, such portion of the surface of said premises as may be desired for the erection of tipples, buildings, power houses, railroad tracks and switches and other improvements for the mining, removal and transportation of said coal (not to exceed 30 acres, however) at the price of dollars per acre, and to convey the title to said surface to said party of the second part, his heirs, legal representatives or assigns, by a good and sufficient WARRANTY DEED, accompanied by a merchantable abstract therefor.

It is further agreed that no shaft shall be sunk or railroad built within five hundred (500) feet of any important building now standing upon said premises and owned by the party of the first part, except by special contract hereafter secured.

Said first party further agrees that if said party of the second part shall be drilling and testing said premises or premises adjacent thereto at the time of the expiration of this option, to then extend the time thereof for a period of sixty days from the date of the expiration hereof.

.....
.....

IN WITNESS WHEREOF, we herein bind ourselves, our heirs, legal representatives and assigns, and have affixed our hands and seals the day and year first above written.

.....[SEAL.]

.....[SEAL.]

.....[SEAL.]

.....[SEAL.]

STATE OF....., }
County of....., } ss.

I,a Notary Public in and for said county, in the state aforesaid, DO HEREBY CERTIFY That.....

.....
personally known to me to be the same person...
whose name.....subscribed to the foregoing
instrument, appeared before me this day in person, and acknowledged that.....he.....signed, sealed and delivered the said instrument as..... free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

GIVEN under my hand and notarial seal, this.... day of.....A. D. 190....

.....

Notary Public.

FORM OF COAL OPTION,

Payments To Be Made, Either in Whole or Part,
with Stock of the Corporation *To Be Formed*
for the Development of the Field Optioned:

THIS AGREEMENT, Made and entered into this
.....day of.....190..., between.....
.....of County,, party of
the first part, and.....of.....,
party of the second part:

WITNESSETH, That the party of the first part in
consideration of one dollar (\$1.00) and other good
and valuable considerations to.....in hand paid
by the said party of the second part, the receipt
of which is hereby acknowledged, does hereby
give, grant, sell and convey unto said party of
the second part, his heirs, or assigns, the exclu-
sive right, privilege, or option, for the period of
.....months from the date hereof, to purchase
all the coal and mineral lying and being under the
surface of the following described real estate sit-
uate in.....County,, to-wit:

.....
.....
.....
.....
.....
.....
.....
(said above described real estate containing.....

acres of land, more or less) at and for the price of \$.....per acre, to be paid as follows, viz:.....dollars in cash, and the balance of said purchase money to be paid in Cumulative 7% Preferred stock of the Mining Corporation which shall be formed for the purpose of taking over said coal above described, and the balance of the field of at least 1,000 acres lying near or adjacent to said coal, and for the mining and removal of the same. It being understood and agreed that said corporation above referred to, shall be organized under the laws of.....and have a capital stock of \$200,000.00, the same to be equally divided into Cumulative 7% Preferred and Common stock, said preferred stock to have all the rights and privileges of the common stock.

Said party of the second part hereby agrees, that he will, within 30 days after options are obtained on at least 1,000 acres of coal near or adjacent to the premises above described, begin drilling, and then cause to be put down upon or in the neighborhood of the above described real estate, one or more drill holes for the purpose of ascertaining and testing the amount and quality of coal that may be found in said vicinity; and that as soon as said drilling shall be completed, and it is thereby demonstrated to the satisfaction of the said party of the second part, that coal of sufficient thickness and quality underlies

said above described premises, then and in that event, said party of the second part agrees to pay for said coal above described at the price and in the manner above set forth.

And the party of the first part further agrees at or before the expiration of.....months from the date hereof to convey unto the party of the second part, his heirs, legal representatives, or assigns, by good and sufficient WARRANTY DEED, accompanied by a merchantable abstract, brought down to date, at and for the price of.....dollars per acre, to be paid by said party of the second part in the manner hereinbefore mentioned, all the coal and mineral lying under said premises, together with the right to mine, dig and remove the same therefrom, together with the right to use all entries under said premises for the purpose of hauling, mining and removing coal from other lands near or adjacent to the above described premises.

And under the continuance of this option the party of the first part hereby grants to the party of the second part, the right of ingress and egress over said premises for the purpose of prospecting and drilling for coal on said premises, and the right to erect such structure or structures as are necessarily incident to the carrying out of said work, and hereby releases said party of the second part from all claims for damages which may

arise upon account of said drillings and prospecting, except damage to growing crops (if any), for which said second party agrees to pay a just compensation.

Said party of the first part further agrees to sell to said party of the second part, his heirs, or assigns, at any time within one year after the purchase of said coal as aforesaid, such portion of the surface of said premises as may be desired for the erection of tipples, buildings, power houses, railroad tracks and switches and other improvements for the mining, removal and transportation of said coal (not to exceed 30 acres, however), at the price of.....dollars per acre, and to convey the title to said surface to the party of the second part, his heirs, legal representatives or assigns, by a good and sufficient WARRANTY DEED, accompanied by a merchantable abstract.

It is further agreed that no shaft shall be sunk or railroad built within five hundred (500) feet of any important building now standing upon said premises and owned by the party of the first part, except by special contract hereafter secured.

Said first party further agrees that if said party of the second part shall be drilling and testing said premises or premises adjacent thereto at the time of the expiration of this option, to then

extend the time thereof for a period of sixty days
from the date of the expiration hereof.

.....
.....

IN WITNESS WHEREOF, we herein bind ourselves,
our heirs, legal representatives and assigns, and
have affixed our hands and seals the day and year
first above written.

.....[SEAL.]
.....[SEAL.]
.....[SEAL.]
.....[SEAL.]

STATE OF....., }
County of....., } ss.

I, a Notary Public in and for
said county, in the state aforesaid, DO HEREBY CER-
TIFY That

.....
personally known to me to be the same person....
whose name.....subscribed to the foregoing
instrument, appeared before me this day, in per-
son, and acknowledged that.....he.....signed,
sealed and delivered the said instrument as.....
free and voluntary act, for the uses and purposes
therein set forth, including the release and waiver
of the right of homestead.

GIVEN under my hand and notarial seal, this....
day of.....A. D. 190....

.....

Notary Public.

STOCKHOLDER'S PROXY.

Know All Men By These Presents:

That the undersigned being the owner of record of Fifty shares of the capital stock of The John Doe Electric Co., of Chicago, do hereby make, constitute and appoint Richard Roe, of Chicago, my true and lawful attorney for me and in my name, place and stead, to attend the annual meeting of the stockholders of said corporation to be held at 333 Plymouth Ave., in the City of Chicago, on the fifth day of May, A. D. 1908, or at any adjournment thereof, and to represent me, and for me and in my name and stead to vote at said meeting upon the said shares of stock standing in my name, upon any and all questions that may be presented thereat, and in the transaction of any other business which may come before said meeting, or any adjournment thereof, as fully as I could do if personally present at the doing thereof, and I hereby ratify and confirm all that my said attorney may do by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this first day of May, 1908.

Witness, WILLIAM SMITH. [SEAL.]

HENRY JAMES.

RULES GOVERNING THE LISTING OF
STOCKS AND BONDS ON THE CHI-
CAGO STOCK EXCHANGE.*

“An application to list securities on the Chicago Stock Exchange, signed by an executive officer over the seal of the corporation, must be filed with the Secretary of the Exchange.”

“Application for an *original listing* of securities of a corporation, must recite:”

1. Title of the Company;
2. Date of Organization;
3. Under the laws of what state incorporated;
4. Purpose for which organized;
5. Amount of authorized Capital Stock—
 - a. Amount issued,
 - b. Par value of shares,
 - c. Rate of dividend,
 - d. Voting power,
 - e. Whether full or partially paid,
 - f. If personal liability attaches to ownership;
6. If Preferred Stock is authorized—
 - a. Preference as to dividends,

* Taken from By-Laws.

- b. Preference as to distribution of Assets,
- c. Whether cumulative or non-cumulative,
- d. Voting power;
- 7. Amount of bonded indebtedness authorized—
 - a. Amount issued,
 - b. Date of Maturity,
 - c. Rate of interest, and when payable,
 - d. Denomination of Bonds and serial numbers,
 - e. Privilege of registration,
 - f. Name and Location of Registrar,
 - g. Name and Location of Trustee;
- 8. Amount of other indebtedness or liability for leases, guarantees, rentals, etc.;
- 9. Location of Principal Office;
- 10. Name and Location of Transfer Agent;
- 11. Name and Location of Registrar;
- 12. Names of Officers and Directors;
- 13. Location and description of property and equipment;
- 14. Dates and duration of charter, franchises, etc.;
- 15. If a consolidation of several previously existing firms or corporations—
 - a. Names and descriptions of constituent companies,
 - b. Whether owned or controlled in fee or otherwise.

“An application to list securities must be accompanied by a check for \$100, drawn to the order of the Treasurer of the Chicago Stock Exchange, for each class of securities to be listed.”

“A corporation is required to maintain in the City of Chicago a Transfer Agency and Registry for its stock. The Company may, if it so elects, transfer its own stock; but the Registrar must be a responsible Bank or Trust Company or other agency satisfactory to the Stock List Committee.”

“An application to list securities must be accompanied by certified copies of:”

- a. Articles of Incorporation, or Charter;
- b. Trust Deeds of all bond issues;
- c. Balance Sheet and Income Account of recent date;

(These may be certified by the auditor of the company or by a recognized Chartered Accountant.)

- d. An agreement in effect as follows:

“In making this application it is hereby agreed as a condition precedent to the listing of the securities, that the Company shall furnish to this Committee at any time, on demand, such reasonable information of its general condition as may be required, and that a failure to give such information shall subject the Company to the penalty

of having its securities struck from the list. Notice of any increase of bonds or stock, stating the purpose for which such new bonds or stock are issued, shall be given in writing to the Secretary of the Stock Exchange at least thirty days before the issuing of said new bonds or stock. Notice shall be given to the Secretary of the Stock Exchange in writing, at least ten days in advance of the closing of the Transfer Books, for any purpose whatsoever."

"No application to list bonds or stock where the total issue amounts to less than \$200,000 par value will be considered by the Committee."

SYNOPSIS OF THE CORPORATION LAWS
of the States of
DELAWARE, MAINE AND VIRGINIA.

[Revised—for Fourth Edition—by William R.
Watson, Esq., Chicago Manager of The Cor-
poration Trust Company.]

DELAWARE.

Business corporations are organized under the General Corporation Law for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose other than banking. They are given the following special powers:

To hold, purchase, or convey real estate and personal property; to purchase, hold, sell, assign, pledge, guarantee, etc., stocks and bonds of other corporations, and generally to do and perform any lawful act usually incident to such corporate bodies.

They may be formed by three or more persons, who need not be residents of the State of Delaware, and the certificate of incorporation may contain any provisions desirable for regulating

the business or defining the powers of the company or its directors and stockholders.

Under proper provision of the certificate of incorporation, business corporations may conduct business in other states or foreign countries, and have offices outside of the State of Delaware; but they must maintain their "principal office" and an agent in charge thereof within the state.

The name of a corporation must contain one of the words "association", "company", "corporation", "club", "incorporated", "society", "union", or "syndicate".

Corporate existence may be made perpetual if so provided in the certificate of incorporation.

The statute provides that the amount of the total authorized capital stock of the corporation shall not be less than \$2,000, and that the amount of capital stock with which a corporation shall commence business shall not be less than \$1,000. There is no requirement, however, that this \$1,000 be paid up at the time of organization.

Subscriptions to or purchases of the capital stock of any corporation organized or to be organized may be paid for wholly or partly by cash, by labor done, by personal property or by real estate or leases thereof; and in the absence of actual fraud in the transaction the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

Every corporation has power to create two or more kinds of stock of such classes, with such designations, preferences, voting power or restrictions or qualifications thereof as shall be stated in the certificate of incorporation.

Preferred stock may be cumulative or non-cumulative and subject to redemption at a fixed time and place at not less than par. If preferred as to dividends, the rate must not exceed eight per centum per annum, before any dividend is set apart or paid to the common stockholders. In no event is a holder of preferred stock personally liable for the debts of the corporation. Preferred stock may be created which has no voting power. At no time shall the total amount of preferred stock exceed two-thirds of the actual capital paid in cash or property. Preferred stock may be converted into common stock by so providing in the certificate of incorporation.

Stockholders may vote by proxy.

The by-laws of a Delaware corporation are for the government and regulation of the members of the corporation and are not binding upon third persons without notice. The power to make and alter by-laws, which rests, by statute, with the stockholders, may by provision in the certificate of incorporation, be conferred upon the directors; but by-laws made by the latter may be altered or repealed by the stockholders.

Every corporation must have at least three directors, one of whom must be a resident of the State of Delaware. The president must be a director. The secretary and treasurer need not be stockholders or directors. The president, secretary and treasurer may be chosen by the stockholders or the directors, as the by-laws may provide. Directors must each be the owner of at least three shares of stock.

Directors are elected for one year and hold office until their successors are chosen and qualify. However, if it be so provided in the certificate of incorporation or any amendment thereof or by a vote of the stockholders, one, two or three classes of directors may be created; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; and of the third class two years thereafter; and at each annual election held after such classification and election, directors shall be chosen for the full term as the case may be to succeed those whose terms expire.

The Board of Directors may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an Executive Committee, who, to the extent provided in said resolution or in the by-laws of said company, shall have and exercise the powers of the Board of Directors in the management of the

business and affairs of the company, and may have power to authorize the seal of the company to be affixed to all papers which may require it.

The original or duplicate of the Stock Ledger is required to be kept at the principal office in the State of Delaware, but other books may be kept outside of the state.

Meetings of the stockholders may be held outside of the State of Delaware, if the by-laws so provide, otherwise such meetings must be held at the principal office of the corporation in Delaware. Directors' meetings may be held outside of Delaware if the by-laws so provide.

The Constitution of Delaware exempts stock of Delaware corporations from taxation of any kind, when held by non-resident individuals or corporations.

An annual report is required to be filed on or before the first Tuesday of January in each year with the Secretary of State, but this report does not require the intimate financial details of the corporation to be disclosed.

FEEES FOR INCORPORATING.

Secretary of State:

Ten cents for each \$1,000 of authorized capital stock to \$2,000,000, in no case less than	\$10.00
---	---------

Five cents per \$1,000 in excess of \$2,000,000.	
Filing and indexing certificate.....	2.00
Certifying copy (each) about.....	5.00
Recorder of Deeds:	
Recording certificate (determined by length) average	7.00

ANNUAL FRANCHISE TAX.

All business corporations must pay between the third Tuesday in March and the first of July an annual license tax based upon the authorized capital stock on the first of January of each year, except certain special classes, such as telegraph, telephone, electric, gas, oil companies, etc., and all companies supplying power of any kind, which must report amount of business done in Delaware. If such corporations operate exclusively outside the State they pay no annual tax. The annual tax is as follows:

BASED ON AUTHORIZED CAPITAL STOCK.

Not exceeding \$ 25,000.....	\$ 5.00
Not exceeding 100,000.....	10.00
Not exceeding 300,000.....	20.00
Not exceeding 500,000,.....	25.00
Not exceeding 1,000,000.....	50.00

Excess at the rate of \$25 per million or part thereof.

MAINE.

Corporations, except those provided for by special acts concerning banking and kindred lines of business, are organized pursuant to the provisions of chapter 47 of the Revised Statutes of Maine, 1903, for any lawful purpose whatever, other than to engage in the liquor business, or to conduct a banking, insurance, railroad, telegraph, telephone, gas or electrical company. Railroad, gas, electrical, telegraph and telephone companies may be organized under the general law if they are to operate entirely without the State of Maine.

There are no restrictions as to the holding of real and personal property, nor any limitation upon the amount of debt which may be created. They may hold stock of other corporations doing the same or a similar business, and may guarantee obligations of other corporations in which they are interested.

Corporations may be organized by three or more persons. The statute does not require these persons to be citizens or residents of Maine, but inasmuch as the approved procedure requires the signers of the Articles of Agreement (which is the first instrument executed in the organization of a Maine corporation) to meet in person, and in view of the fact that the statute requires

all stockholders' meetings to be held within the state, Maine corporations are invariably organized by residents of the state, who act for the real parties in interest.

Corporations may conduct business in other states or foreign countries, and have offices outside of the state, but must maintain their "principal office" and a clerk in charge thereof within this state.

The name of the corporation may be in English or a foreign language, but must not contain the words "bank", "trust", "insurance", "railroad", "savings bank", or "safe deposit".

Corporate existence is regarded as perpetual in this state although there is no provision regulating this feature.

Corporations are permitted to purchase property necessary for their business "And issue stock to the amount of the value thereof in payment therefor, and may likewise issue stock for services rendered to such corporations, and the stock so issued shall be full paid stock" and it is provided that "In the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased or services rendered shall be conclusive".

The Supreme Court of Maine has repeatedly held that liability on stock is applicable only to parties taking directly from the corporation, and

refuses to hold liable a purchaser from an existing stockholder though the stock had never been fully paid for, and though such purchaser, with knowledge of that fact, paid less than par. *In other words liability does not here travel with stock.*

Stock may be paid in—in installments, and there is no minimum with which a corporation may commence business, but the authorized capital must not be less than \$1,000.

Every corporation may create two or more kinds of stock, with such classes and with such designations, preferences and voting powers or restrictions or qualifications thereof, as shall be fixed or determined in the by-laws, or by vote of the stockholders at a meeting duly called for that purpose. There is no limitation on the rate of dividends which may be paid on or set apart for the holders of preferred stock, and preferred stock dividends may be made cumulative. Preferred stock may be created without voting power; and may be made redeemable.

Every corporation must have at least three directors, none of whom is required to be a resident of the state, but they must all be stockholders.

The-president, who must be a director, is in the first instance elected at the meeting of the signers of the Articles of Agreement, and thereafter by

the directors. The treasurer and clerk, who need not be directors, are in the first instance elected by the signers, afterwards by the stockholders at the annual meeting, but by so providing in the by-laws the treasurer may be elected by the directors.

By a provision in the by-laws directors may be divided into classes, and their election may be for a longer term than one year. Directors may also act through committees whose powers shall be defined in the by-laws. By-laws are adopted by the stockholders.

Books are required to be kept at the clerk's office in the state, showing a true and complete list of all stockholders, their residences, and the amount of stock held by each.

Stockholders may vote by proxy granted within thirty days of the meeting.

Stockholders' meetings must be held at the principal office of the corporation in the state. Directors' meetings may be held outside of the state if the by-laws so provide.

A report signed and sworn to by the president or treasurer is required to be filed with the Secretary of State on or before the first of June annually, setting forth the names and residences of the officers and directors of the corporation, the location of its principal office, and the amount of its authorized capital stock.

FEES FOR INCORPORATING.

The fee payable to the State Treasurer, at the time of filing certificate, is based upon the authorized capital as follows:

\$ 1,000 to \$ 10,000, inclusive	\$10.00
10,000 to 500,000, last inclusive	50.00
In excess of \$500,000, for each \$100,000...	10.00

In addition, the official charges are:

Attorney-General, for examination.....	\$5.00
Register of Deeds, recording	5.00
Secretary of State, filing.....	5.00

The annual franchise tax assessed on or before the first day of July, in accordance with a return filed on June 1st, and payable on the first day of September in each year, is, like the organization tax, based upon the authorized capital stock of the corporation as follows:

\$ 1,000 to \$ 50,000, inclusive	\$ 5.00
50,000 to 200,000, last inclusive.....	10.00
200,000 to 500,000, last inclusive.....	50.00
500,000 to 1,000,000, last inclusive.....	75.00
On each million dollars or part thereof in excess of \$1,000,000.....	50.00

VIRGINIA.

Business corporations are organized under "An Act Concerning Corporations", for the transac-

tion of any lawful business, or to promote or conduct any legitimate object or purpose, except a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company, or other company which shall need to possess the right of eminent domain, for the purpose of taking and condemning lands within this State; they are given the following special powers:

To hold, purchase and convey such real estate and personal property as the purposes of the corporation shall require, provided that the amount of real estate at which the corporation's holdings at any time are to be limited, shall be fixed and stated in the articles of association. If authorized so to do in the articles they may subscribe to, purchase or otherwise acquire, or guarantee or become surety in respect to the stock, bonds or other securities and obligations of other companies, and to exercise all other powers granted to corporations organized under the Act and all powers conferred upon corporations by the existing laws of this state, so far as they are not in conflict with the Act and by all acts hereafter passed, amendatory thereof or supplemental thereto.

They may be formed by three (3) or more persons who need not be residents of the Commonwealth of Virginia, and the articles of association may contain any provision which the incorpora-

tors may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation; and any provision creating, defining, limiting or regulating the powers of the corporation, of the directors or of the stockholders, or of any class or classes of stockholders; provided such provision be not inconsistent with the Act.

The Act provides that any corporation may conduct its business in this State, in other States, in the District of Columbia, in the Territories and Colonies of the United States and in foreign countries; may have offices without this State as well as within, provided that its principal office shall be in this State; and if no officers or directors are residents of the city or county in which the principal office is located, a resident practicing attorney must be appointed as agent for service of process.

The name of a corporation must contain the word "Corporation" or the word "incorporated."

Corporate existence may be perpetual if so provided in the articles of association.

There is no limit as to the amount of capital stock, but the maximum and minimum amount of capital stock must be set forth in the articles of association. The incorporators have charge of affairs of the corporation until such amount of stock as the incorporators may determine—not

less than the minimum fixed by the articles—is subscribed, and such terms in respect thereto as they, in the contract of subscription, may impose, are complied with.

Subscriptions to the capital stock may be paid in money, land or other property, real or personal, leases, options, mines, minerals, mineral rights, patent rights, rights of way, or other rights, easements, contracts, labor or services and there shall be no individual or personal liability on any subscriber beyond the obligation to comply with such terms as he may have agreed to in his contract of subscription; and any corporation may adopt such plan of financial organization and may dispose of its stock or bonds for the purposes of its incorporation at such prices, for such consideration, and on such terms and conditions as it sees fit; provided, however, that before making an issue of its stock or bonds it shall file with the State Corporation Commission a statement (verified by oath of the president or secretary of the corporation, and in such form as may be prescribed or permitted by the Commission), setting forth fully and accurately the basis or financial plan upon which such stock and bonds are to be issued; and where such basis or plan includes services or property (other than money) received or to be received by the corporation, such statement shall accurately specify and describe in the

manner prescribed or permitted by the Commission the services and property, together with the valuation at which the same are received, or to be received, and the judgment of the directors as to the value of such land or other property, real or personal, leases, options, mines, mineral rights, patent rights, rights of way, or other rights of easements, contracts, labor or services, in the absence of fraud, participated in by both parties to the transaction, shall be conclusive.

Every corporation shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers, or restrictions or qualifications thereof, as shall be stated and expressed in the articles of association.

Preferred stock may be made subject to redemption at any time after three (3) years from the issue thereof, at not less than par, and it may be provided that the holders thereof shall be entitled to receive dividends hereon at such rates and on such conditions as shall be stated in the articles, and such dividends may be made payable before any dividend shall be set apart or paid on the common stock and may be made cumulative. Preferred stock may be created with no voting powers.

Stockholders may vote by proxy.

The power of making and altering by-laws shall

be in the stockholders; but any corporation may in the articles of association or by resolution of its stockholders, confer that power upon the directors. By-laws made by directors under power or conferred may be altered or repealed by the stockholders.

Every corporation must have at least three directors, as may be prescribed by the articles of association or the by-laws. They are elected for the term fixed by the articles or by-laws and until their successors are respectively elected and qualified. The statute does not require a director to be a stockholder and none of the directors need be residents of Virginia. The president must be a director, and unless otherwise provided by the by-laws of the corporation, he shall be elected by the stockholders. The secretary and treasurer need not be stockholders or directors.

By so providing in its articles any corporation may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; provided that no class shall be elected for a shorter period than one year, and that the term of office of at least one class shall expire in each year. Any corporation which shall have more than one kind of stock may, by so providing in its charter, certificate of incorporation, or articles of association, or in an amendment, confer the right to choose

the directors of any class upon stockholders of any class or classes, to the exclusion of others.

The board of directors may, if authorized by the stockholders, or by the by-laws, by a resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee who, to the extent provided in said resolution or in the by-laws of said corporation, shall have and exercise the power of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the company to be affixed to all papers which may require it.

There is no statutory requirement as to keeping any books of the corporation in the state when all of the business is transacted without the state.

The power to borrow money is not limited in any way.

All meetings of the stockholders shall be held at such place *in the State* of Virginia as may from time to time be fixed by the board of directors. Directors' meetings may be held either within or without this State.

An annual statement is required to be filed within thirty (30) days after the time appointed for the holding of the annual election of directors. This statement is filed with the Corporation Commission and must contain the name and location

of the corporation, the name and postoffice address of the agent upon whom process against the corporation may be served, character of business transacted, maximum capital stock authorized, amount of stock actually issued, amount of stock actually outstanding, date of last annual meeting of stockholders, date of last election of directors, names and addresses of officers and directors and date when their respective terms of office expire, and the date appointed for the next annual meeting of stockholders. This report is signed by the president and secretary.

An annual report is required to be filed after each annual meeting of stockholders, with the clerk of the Circuit Court of the county in which the principal office is located, or clerk of the corporation or Chancery Court, if such principal office is located in a City. This report merely requires the name of the corporation to be given, a list of the officers and directors and the date appointed for the next annual meeting of the stockholders, and is signed by the president and secretary.

FEES FOR INCORPORATING.

State Treasurer:

Twenty cents on each \$1,000 of authorized capital stock, but not less than \$10 on \$50,000 or less of capi-

tal stock, nor more than \$600 on \$3,000,000 or more of capital stock.	
Fee to State Corporation Commission:	
Affixing seal, entering, issuing and certifying charter	\$ 5.00
Fees to Secretary of State:	
Recording charter (\$3 for first two pages, and 50¢ for each additional page), about	8.00
Certifying copy, about	10.00
Fees to Clerk of Chancery Court:	
Recording charter (\$3 for first two pages, and 50c for each additional page), about	8.00
Recording power of attorney of regis- tered agent	1.25

ANNUAL FRANCHISE TAX.

Annual Franchise Tax on Maximum Capital stock of—\$25,000, or under		\$ 10.00
Over \$ 25,000 and not exceeding \$	50,000	20.00
Over	50,000 and not exceeding	100,000 40.00
Over	100,000 and not exceeding	300,000 60.00
Over	300,000 and not exceeding	500,000 100.00
Over	500,000 and not exceeding	1,000,000 200.00
Over \$1,000,000, \$10 for each \$100,000 of excess, or fraction thereof. Payable on or before March 1st.		

ANNUAL REGISTRATION FEE.

Annual Registration Fee on Maximum Capital
stock of

\$15,000 or under	\$ 5.00
Over \$ 15,000 to \$ 50,000.....	10.00
Over 50,000 to 100,000.....	15.00
Over 100,000 to 300,000.....	20.00
Over \$300,000	25.00

. Payable on or before March 1st.

NOTE: As the corporation laws of the various states are constantly undergoing changes, it will be necessary to refer to the laws in force at the time of inquiry, in order that accurate information may be obtained.

THE AUTHOR.

FOREIGN CORPORATIONS.

“AN ACT entitled ‘An act to regulate the admission of foreign corporations for profit, to do business in the State of Illinois.’ (Approved May 18, 1905; in force July 1, 1905, as amended in 1911.)

“Section 1. Be it enacted by the People of the State of Illinois represented in the General Assembly: That before any foreign corporation for profit shall be permitted or allowed to transact any business or exercise any of its corporate powers in the State of Illinois, other than insurance companies, building and loan companies and surety companies, they shall be required to comply with the provisions of this act and shall be subject to all of the regulations prescribed herein, as well as all other regulations, limitations and restrictions applying to corporations of like character organized under the laws of this state.”

“Sec. 2. When any corporation organized under the laws of any foreign state or country, for the transaction of business for profit, desires admission into the State of Illinois, for the purpose

of transacting business or exercising its corporate powers or franchise it shall make application to the Secretary of State, signed and sworn to by the president and secretary, stating what business such corporation proposes to pursue under its charter, the amount of capital stock of such corporation, whether it is transacting or it is intended that it shall transact business in any other state or country, the proportion of its business intended to be carried on in the State of Illinois, the amount paid in upon its capital stock, what property and assets and an estimate of the value thereof will be employed in the business of said corporation in the State of Illinois; if any of its capital subscribed has not been paid in what disposition is to be made thereof, the names of the president, secretary and directors of said corporation and their residences, where its principal office in Illinois will be located and the name and address of some attorney in fact, upon whom service can be had in all suits commenced in this state and, if required by the Secretary of State, the names and residences of all stockholders in said corporation as shown by its records, and such corporation shall file with the Secretary of State, copy of its charter or articles of incorporation, or in case such corporation is incorporated merely by a certificate then a copy of its certificate of incorporation duly certified and authenticated by

the officer who issued the original, or by the recorder or registrar of the office in which said original charter, articles or certificates may have been recorded.”

“The Secretary of State shall have power to prescribe the form of such application and may, in addition thereto, propound such interrogatory or interrogatories to the applicants respecting the character of the business in which said corporation proposes to engage, the amount of its capital stock, the proportion of its business that it is intended shall be carried on in this state, and the proportion and location of its business in other states or countries, and such interrogatories shall be answered under oath and the interrogatories and answers thereto shall be filed with said application and with the certified copy of its charter and shall be and operate as a limitation upon the powers of said corporation to transact business in the State of Illinois.”

“The Secretary of State, upon the admission of such foreign corporation to do business in the State of Illinois, shall issue a certified copy of all papers, including certified copy of the charter of said corporation, and shall state, in a certificate of authority to do business issued by him, the powers and object of said corporation which may be exercised in this state, not in conflict with the law or public policy of this state, and no corpora-

tion shall, by the certificate of the Secretary of State, be authorized to transact any business in this state for the transaction of which a corporation cannot be organized under the laws of this state, and no foreign corporation shall exercise any powers in this state not authorized by the provisions of its charter."

"Sec. 3. Every foreign corporation admitted to do business in the State of Illinois under the provisions of this act shall constantly keep on file in the office of the Secretary of State an affidavit of the president and secretary, showing the location of its principal business office in the State of Illinois, and the name and address of some person who may be found in this State, for the purpose of accepting service upon said corporation, in all suits that may be commenced against it, and as often as said corporation shall change the location of its office, or its attorney for receiving and accepting service, a new affidavit shall be filed to take the place of all such affidavits previously filed by the officers of said corporation. Such corporation when admitted to do business in the State of Illinois, under this act shall be required to make such reports from time to time, as are required to be made by similar corporations organized under the laws of this state and all regulations now in force or hereafter imposed upon domestic corporations. shall be alike observed and complied with

by all foreign corporations doing business in this state."

"No foreign corporation admitted to do business in this state under the provisions of this act shall hold any real estate except such as may be necessary for the proper carrying on of its legitimate business, nor be permitted to mortgage, pledge or encumber its real or personal property situated in this state to the injury or exclusion of any citizen or corporation of this state who is creditor of such foreign corporation and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state shall take effect as against any citizen or corporation of this state until all of its liabilities due any person or corporation of this state at the time of recording such mortgage, shall have been fully paid and extinguished. Before any foreign corporation shall be authorized to do business in this state it shall be required to pay into the office of the Secretary of State upon the proportion of its stock represented by its property and business in Illinois, fees equal to those required of similar corporations formed within and under the laws of this state."

* * * "Sec. 5. At any time the Secretary of State may, in his discretion, prepare and propound to the president, secretary, any director

or manager of any corporation doing business in this state under the provisions of this act, such interrogatories respecting the character of business being transacted by it, the location of its business, the names and residences of its directors and officers, and the amount of capital paid in, as well as what disposition has been made of capital stock subscribed for or authorized and not paid in, and such interrogatories shall be answered under oath by the officer or director to whom propounded, within five days after receipt thereof, and upon the failure or refusal of such officer or director to fully answer such interrogatories and file the same, with his answers, in the office of the Secretary of State, within ten days after receiving the same, the Secretary of State may revoke the authority of such corporation to do business in this state, by filing with the certified copy of the charter of such corporation a certificate of revocation, and by the publication thereof for one issue in some newspaper of general circulation in the State of Illinois, and thereafter such corporation shall not exercise any of its corporate powers or franchises in the State of Illinois. When such interrogatories shall have been answered and filed with the answers thereto, in the office of the Secretary of State, if thereby any violation of the law, or of the charter of said corporation, or any excess of its powers and

authority to do business in this state is disclosed, a copy thereof, with such information, shall be immediately transmitted to the Attorney General of this state for his action."

"Sec. 6. Every foreign corporation amenable to the provisions of this act, which shall neglect or fail to comply with any of the provisions of the same as herein provided, shall be subject to a penalty of not less than one thousand dollars (\$1,000) nor exceeding ten thousand dollars (\$10,000), to be recovered before any court of competent jurisdiction, and it is hereby made the duty of the Secretary of State, as he may be advised, or may ascertain that any corporation is doing business in contravention of this act, to report such fact to the Attorney General of this state, and it shall be his duty and the duty of the state's attorney of the proper county to bring such actions at law as shall be necessary for the recovery of the penalties imposed hereby, and in addition to such penalty, if after this act shall take effect any foreign corporation shall fail to comply herewith, no suit may be maintained either at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort in any court in this state."

* * * * *

EARNINGS ON STOCKS AND BONDS.

This table gives the approximate earnings on Stocks and Bonds. As an illustration, a 5% stock or bond selling at 90, yields 5.56%. By looking down the 5% column to 90 this will be shown,

Selling Price	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	12%
10	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	120%
12½	8.	16.	24.	32.	40.	48.	56.	64.	72.	80.	96.
15	6.67	13.33	20.	26.67	33.33	40.	46.67	53.33	60.	66.67	80.
17½	5.71	11.43	17.14	22.86	28.57	34.28	40.	45.71	51.43	57.14	68.57
20	5	10	15	20	25	30	35	40	45	50	60
22½	4.44	8.89	13.33	17.78	22.22	26.67	31.11	35.56	40.	44.44	53.33
25	4.	8.	12.	16.	20.	24.	28.	32.	36.	40.	48.
27½	3.64	7.27	10.91	14.55	18.18	21.82	25.45	29.09	32.73	36.36	42.64
30	3.33	6.67	10.	13.33	16.67	20.	23.33	26.67	30.	33.33	40.
32½	3.08	6.15	9.23	12.31	15.39	18.46	21.54	24.62	27.69	30.77	36.92
35	2.86	5.71	8.57	11.43	14.29	17.14	20.	22.86	25.71	28.57	34.29
37½	2.67	5.33	8.	10.67	13.33	16.	18.67	21.33	24.	26.67	32.
40	2.5	5	7.5	10.	12.5	15.	17.5	20.	22.5	25.	30.
42½	2.35	4.70	7.06	9.41	11.76	14.12	16.47	18.82	21.18	23.53	28.23
45	2.22	4.44	6.67	8.89	11.11	13.33	15.56	17.78	20.	22.22	26.67
47½	2.11	4.21	6.32	8.42	10.53	12.63	14.74	16.84	18.95	21.05	25.26
50	2	4	6	8	10	12	14	16	18	20	24
52½	1.90	3.81	5.71	7.62	9.52	11.43	13.33	15.24	17.14	19.05	22.86
55	1.82	3.63	5.45	7.27	9.09	10.91	12.72	14.55	16.36	18.18	21.82
57½	1.74	3.48	5.22	6.96	8.70	10.43	12.17	13.91	15.65	17.39	20.87
60	1.67	3.33	5	6.67	8.33	10	11.67	13.33	15	16.67	20
62½	1.6	3.2	4.8	6.4	8.	9.6	11.2	12.8	14.4	16	19.02
65	1.54	3.08	4.62	6.15	7.69	9.23	10.77	12.31	13.85	15.38	18.46
67½	1.48	2.96	4.44	5.93	7.41	8.89	10.37	11.85	13.33	14.81	17.78
70	1.43	2.86	4.29	5.71	7.14	8.57	10.	11.43	12.86	14.29	17.14
72½	1.38	2.76	4.14	5.52	6.90	8.27	9.65	11.03	12.41	13.79	16.55
75	1.33	2.67	4.	5.33	6.67	8.	9.33	10.67	12.	13.33	16.
77½	1.29	2.58	3.87	5.16	6.45	7.74	9.03	10.32	11.61	12.90	15.48
80	1.25	2.5	3.75	5.	6.25	7.5	8.75	10.	11.25	12.5	15.
82½	1.21	2.42	3.64	4.85	6.06	7.27	8.48	9.70	10.91	12.12	14.64
85	1.18	2.35	3.53	4.71	5.88	7.06	8.24	9.41	10.59	11.76	14.12
87½	1.14	2.29	3.43	4.57	5.71	6.86	8.	9.14	10.29	11.43	13.71
90	1.11	2.22	3.33	4.44	5.56	6.67	7.78	8.89	10.	11.11	13.33
92½	1.08	2.16	3.24	4.32	5.41	6.49	7.57	8.65	9.73	10.81	12.97
95	1.05	2.11	3.16	4.21	5.26	6.32	7.37	8.42	9.47	10.53	12.63
97½	1.03	2.05	3.08	4.10	5.13	6.15	7.18	8.21	9.23	10.26	12.31
100	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	12.
105	.95	1.90	2.86	3.81	4.76	5.71	6.67	7.62	8.57	9.52	11.43
110	.91	1.82	2.73	3.64	4.55	5.45	6.36	7.27	8.18	9.09	10.91
115	.87	1.74	2.61	3.48	4.35	5.22	6.09	6.96	7.83	8.70	10.48
120	.83	1.67	2.5	3.33	4.17	5.	5.83	6.67	7.5	8.33	10.
125	.8	1.6	2.4	3.2	4.	4.8	5.6	6.4	7.2	8.	9.6
130	.77	1.54	2.31	3.08	3.85	4.62	5.39	6.15	6.92	7.69	9.23
135	.74	1.48	2.22	2.96	3.70	4.44	5.19	5.93	6.67	7.41	8.89
140	.71	1.43	2.14	2.86	3.57	4.29	5.	5.71	6.43	7.14	8.57
145	.69	1.38	2.07	2.76	3.45	4.14	4.83	5.52	6.21	6.90	8.28
150	.67	1.33	2.	2.67	3.33	4.	4.67	5.33	6.	6.67	8.
155	.65	1.29	1.94	2.58	3.23	3.87	4.52	5.16	5.81	6.45	7.74
160	.63	1.25	1.87	2.5	3.12	3.75	4.37	5.	5.62	6.25	7.5
165	.61	1.21	1.82	2.42	3.03	3.64	4.24	4.85	5.45	6.06	7.27
170	.59	1.18	1.76	2.35	2.94	3.53	4.12	4.71	5.29	5.88	7.06
175	.57	1.14	1.71	2.29	2.86	3.43	4.	4.57	5.14	5.71	6.85
180	.56	1.11	1.67	2.22	2.78	3.33	3.89	4.44	5.	5.56	6.67
185	.54	1.08	1.62	2.16	2.70	3.24	3.78	4.32	4.86	5.41	6.49
190	.53	1.05	1.58	2.11	2.63	3.16	3.68	4.21	4.74	5.26	6.32
195	.51	1.03	1.54	2.05	2.56	3.08	3.59	4.10	4.62	5.13	6.15
200	.5	1.	1.5	2.	2.5	3.	3.5	4.	4.5	5.	6.

INDEX

A

ACCOUNTS,	Page
Books of	110
Examination of	115
How to Audit	118
ADVANTAGES OF INCORPORATING	24
AGREEMENTS,	
Between Majority Stockholders	104
Legality of	105
Promoters	159
To Incorporate	207, 208
AMOUNT OF CAPITALIZATION	54
APPENDIX	205
APPRAISAL OF PROPERTY	83, 214
Illustration	242
Observations on	32-214
APPROVAL OF MINUTES OF MEETINGS.....	112
ASSIGNMENT,	
Of Commissioners' Receipt or Subscription.....	247, 249
Of Installment Certificate	250, 252
Of Patent	264, 266, 268
Of Stock	51
AUDIT OF ACCOUNTS, ETC.....	115
How to Accomplish	118

B

BONDS (See Capital, Bonds and Stocks),	
Convertible into Stock	52
Capital Obtained by Issue of	51
Sale of	62, 71, 79
BONUS,	
Stock as	73

	Page
BOOKS,	
Corporate Books	110
Inspection of	115
Minute Book	111
BUSINESS CORPORATIONS (Subject of Discussion),	
Distinguished from Mining	188
BY-LAWS AND THEIR USES.....	106
Adoption	108
Illustration	253
Observations on	216

C

CAPITAL, BONDS AND STOCKS,	
Defined and Distinguished	46
Observations on	45
CAPITALIZATION OF CORPORATIONS	54
Mode of	59, 60
Mining Corporations	191
Good Will as Basis	174
CAPITAL,	
Raising Additional	64
CAPITAL STOCK	46
CERTIFICATE OF INCORPORATION,	
Filing	28-34
Observations on	34
CERTIFICATE OF STOCK,	
Assignment of	51
Common Stock	48
Negotiability of	51
Preferred Stock	49
CHARTER (See Certificate of Incorporation).	
CLASSIFICATION,	
Of Directors	32, 289, 294
Of Stock	288, 294, 300
COMMON ERRORS	21
COMMON STOCK (See Capital, Bonds and Stocks).....	45

	Page
CONSOLIDATION OF CORPORATIONS,	
Discussion on	138
Illustration of	229
CONSOLIDATION OF ENTERPRISES	138
How Accomplished	229
CONTRACTS,	
Promotion	159
Purchasing Assets by	212
CORPORATION, AND ITS ADVANTAGES.....	24
CORPORATE FINANCING	45
CORPORATE MANAGEMENT	91
CORPORATE RECORDS AND BOOKS OF ACCOUNT.....	110
CORPORATION,	
Defined	24
How Organized	27
Where to Organize	37
Advantages of	24
Mining Corporations	188
Substitute for	24
COUNSEL,	
Necessity of	14, 201, 206
Compensation of	202
CUMULATIVE DIVIDENDS,	
Defined	49
Illustration of Provisions	238
CUMULATIVE VOTING,	
Explained	105, 106

D

DEBTS,	
Directors' Liability for	92
Officers' Liability for	96
Stockholders' Liability for	98
DELAWARE,	
Synopsis of Corporation Laws	286
DEPRECIATION (See Accounting, Etc.).	
DIRECTORS AND OFFICERS—THEIR DUTIES AND LIABILITIES	91

	Page
DISSOLUTION OF CORPORATION	141
DIVIDENDS (See Capital, Bonds and Stocks).....	45
Cumulative and Non-cumulative.....	49
How Secured to Preferred and Common Stockholders..	49-238
Liability for Unlawful Payment.....	92
Table of Earnings.....	313
DURATION,	
Of Corporate Existence.....	30-31
In Delaware	286
In Maine	293
In Virginia	298

E

EARNINGS,	
Capitalization Regulated by	56
Table of	313
Good Will Valued as	175
ELECTIONS (See Delaware, Maine and Virginia),	
Directors and Officers	32, 33
ERRORS, COMMON	21
EXAMINATION OF BOOKS AND RECORDS	115
How accomplished	118
EXCHANGE OF PROPERTY FOR STOCK,	
Observations on	31, 80, 99, 155, 175, 191
Plan Illustrated	227, 229
EXPENSES OF INCORPORATION,	
In Delaware	290
In Maine	296
In Virginia	303
Observations on	38, 201

F

FEEs FOR INCORPORATING,	
Delaware	290
Maine	296
Virginia	303
Attorneys'	201
FINANCING ENTERPRISES....	22, 45-54, 64, 191, 208, 209, 213

	Page
FOREIGN CORPORATIONS,	
Law Regulating	41
E. g. Illinois	306
FORMATION OF A CORPORATION,	
How to Accomplish	27
Mining and Mineral	191
FORMS (See Illustrations) .	205-280
FULLY PAID STOCK (See Capital, Bonds and Stocks).	

G

GOOD WILL,	
Good Will—Trademarks and Trade Names.....	170
How Preserved	25, 82, 170
How Valued	175
GUARANTEED STOCK,	
Discussed	168

H

HOW TO ORGANIZE A CORPORATION.....	27
------------------------------------	----

I

ILLUSTRATIONS (See Explanation of).....	205
Appraisal of Property	214, 242
Assignment of Invention	264
Assignment of Patent	268
Assignment of Undivided Interest in Patent.....	266
By-Laws	253
Contracts, General and Special	207, 208, 218, 221
Commissioners' Receipt	247
Escrow Agreement	201
Fraudulent Financing	66, 143
Installment Certificate	250
Offering Stock for Sale	213, 234
Option Contract (Cash Plan).....	270
Option Contract (Stock Plan).....	275
Proxy to Vote	281
Proposition to Corporation	212-229
Purpose for Coal Company.....	196

	Page
Reorganization, How Accomplished.....	229
Reorganization Certificate	209, 227
Resolution, Ratifying, Etc.....	244
INCREASE OF CAPITAL STOCK,	
When Advisable	36, 73
INSPECTION OF CORPORATE BOOKS,	
Stockholders, Right to	125
ISSUANCE OF STOCK FOR PROPERTY	
.....	31, 80, 99, 155, 175, 191

L

LEADING INCORPORATING STATES.....	38
Synopsis of Laws of.....	286
LEGAL ENTITY—CORPORATION IS.....	24, 47
LIABILITY,	
Of Directors and Officers	91
Of Promoter	161
Of Stockholders	98
LIQUIDATION (See Dissolution).	
LISTING OF STOCKS AND BONDS.....	63
E. g., Chicago Stock Exchange Rules.....	282
LOCATION	74

M

MAINE,	
Synopsis of Corporation Laws.....	292
MAJORITY STOCKHOLDERS,	
Rights of	103
MEETINGS,	
Records of	111-117
To Organize Corporation	32, 111
In Delaware	290
In Maine	292
In Virginia	302
MINING ENTERPRISES,	
Observations on	188
MINORITY STOCKHOLDERS,	
Rights of	103

INDEX.

321

	Page
MINUTES,	
Amendment of	113
Approval of	112
Books of	111
MORTGAGE,	
Security for Bonds	51, 52

N

NAME,	
Preservation of	25, 82, 170
Trade Name	25-170
NUMBER OF DIRECTORS.....	33
In Delaware	289
In Maine	294
In Virginia	301

O

OFFERING OF STOCK FOR SALE.....	234
Observations on	213
OFFICE IN OTHER STATES (See Foreign Corporation).	
OFFICERS (See By-Laws),	
Liabilities for Salaries Paid, When, Etc.....	91-96
Necessary	35
Powers of	91
OPTIONS,	
Forms of	270-275
Purpose of	199
ORGANIZATION (Subject of Discussion).	
OVER-ISSUED STOCK,	
Defined	48
OVER-VALUATION OF PROPERTY,	
Liability Therefrom	98, 143

P

PAR VALUE,	
Stock Should Be Issued for	99, 102
Non Par Value	57
PARTNERSHIP (see Advantages of Incorporation).	

	Page
PATENTS (See Patents and Their Commercial Value).....	177
Assignment of Invention Before Patent.....	264
Assignment of Undivided Interest.....	268
Assignment of Whole, After Patent Issues....	266
PAYMENT FOR STOCK IN PROPERTY (See Over-Valuation of Property).	
PLANS,	
Illustrations	205-280
Importance of	15, 45, 70, 201, 205
POWERS,	
How Derived	27, 29
PREFERRED STOCK,	
Cumulative	49, 238
Non-cumulative	49-238
Right of Issue	48, 49
Terms and Conditions of	48, 49
PROMOTERS,	
Contracts (See Promotion Contracts).....	159
Defined and Discussed	153
Liabilities of	162
PROMOTION CONTRACTS,	
Observations on	159
PROMOTION OF ENTERPRISES	153
PROPOSITION TO CORPORATION, ETC.....	229
Observations on	212
PROSPECTUS,	
Illustration	234
Observations on	213
PROXY,	
Form of	281
Right to Appoint	105, 125
PURPOSES (See Delaware, Maine and Virginia),	
Observations on	24, 28

R

RAISING ADDITIONAL CAPITAL	64
RATIFICATION,	
Of Acts of Officers, Etc.....	111, 117

	Page
RECORDING,	
By-Laws	111-117
Minutes	111-117
REORGANIZATION,	
Observations on	129
REORGANIZATION CERTIFICATE,	
Explanation	209
Illustration	227
REPORTS,	
Annual	96
Resolution Ratifying Commissioners, Etc.....	244
RESOLUTION,	
In Accepting Property, Etc.....	215
Ratifying Acts of Commissioners, Etc.....	244
RIGHTS OF STOCKHOLDERS,	
Discussion on	98

S

SALARIES,	
Of Directors and Officers.....	95-96
SALE,	
Of Business	26, 82, 131, 208, 221
Proposition to Corporation	212, 229
SECRET PROFITS	93, 164
SHARES (See Capital, Bonds and Stocks).	
STOCK (See Capital, Bonds and Stocks).....	45
Classification and Definitions of.....	48
Listing	63
STOCKHOLDERS' RIGHTS AND LIABILITIES,	
Discussion on	98
STOCK-JOBING	143
SUBSCRIBER,	
To Capital Stock—Liability of.....	31, 98
Subscription	31, 207

T

TABLE,	
Of Earnings on Stocks and Bonds.....	313

	Page
TRADEMARKS	171
Observations on	170-177
TRADE NAME,	
Value of	25-29, 82-170
TRANSFERRING AN ESTABLISHED BUSINESS TO A CORPORATION	80

U

UNDERWRITING,	
Contracts Relating to	167

V

VALUATION OF PROPERTY,	
Abuse of	81, 99
A Safe Rule in	81
Good Will	175
Mining Property Distinguished	188
VIRGINIA,	
Synopsis of Corporation Laws of	296
VOTING,	
Cumulative	105, 106
Observations on	98
Proxies	105-125

W

WATERED STOCK,	
Defined	48
WHERE TO ORGANIZE,	
Subject Discussed	37
Laws of Favorite States	286

